

## **Chapter 7 – Comments and Correspondence**

This chapter includes a summary of comments received during the public review period for the Environmental Assessment. Letters received are presented in their entirety with responses from the FHWA following the letter, where appropriate.

## Summary of Public Comments

Comment From	Comment Number	Comment	FHWA's Response
Dennis and Nancy Kurtz, Louis Kraft	1	Highway 20 should be built as a road and a dike in Zones 2 and 3.	Constructing ND 20 in Zone 3 as a dike (dam) near Spring Lake was considered but eliminated for reasons discussed in the EA. In Zone 2, advantages and disadvantages of building ND 20 as a dike (dam) will be considered during the selection of the preferred alternative.
Jacqueline Nelson, Judy Geske, David and Kim Brown, Duane T. Nelson, Joan Belgarde, Arne Berg	2	Choices Preferred: Alternatives 1-A, 2-D, 3-A, 4-B.	Comment noted.
Richard Yankton, Dennis Kurtz, Joe and Joan Davis, Roger Skadsem	3	Specific comments regarding alignment shifts to better accommodate local problems or conditions. Examples include a shift in the alignment of a dam to avoid the reconstruction of an intersection, or the shift in a dam alignment to allow for better use of remaining private land.	FHWA will include a commitment that these site-specific concerns are evaluated during final design.
Bonita Morin, Michael Lunak	4	Concerns that any gaps in funding will have to be absorbed by the Tribe	Funding shortfalls can be identified by the project development team. Although FHWA will mitigate for direct impacts of the project, there may be some collateral costs that will have to be borne by the Tribe. However, these costs will be far less than those under the "No Action" alternative.
Dennis and Nancy Kurtz	5	Request to clean out Toulna Coulee and put in spillway.	Changes to Toulna Coulee are outside of the scope of this project. This was an alternative considered, but dismissed from further analysis in the EA.

Comment From	Comment Number	Comment	FHWA's Response
Deborah Morin	6	Where did the money come from for the massive dike around Devils Lake? The long range planning must not have seen the harm to the reservation that would result. Two task forces are too many. Why haven't senators come up with more money yet?	The money for the levee system in Devils Lake was allocated by Congress to the U.S. Corps of Engineers. The remainder of the comments are outside the ability of the FHWA to address or are beyond the scope of this project.
Bonita Morin	7	Depending on the alternative selected, concern would focus on the SouthEast shore and reservation "boundaries"	The effects of rising Lake waters on tribal lands outside of the project area are outside the scope of this project.
Bonita Morin	8	Does SAFETEA-LU Section 1937 diminish the opportunity for the tribe to apply for FEMA funds? If not, why not stated in legislation. This should be clarified specifically.	The Section 1937 funds are separate from the legislation that authorizes FEMA's programs. FHWA will clarify this in the EA.
Bonita Morin	9	Can a report from a similar situation be provided for review? What other areas have been impacted by rising lake waters and what was the outcome? What will the long term outcome of this project be?	The Devils Lake situation is unique in American history. The Great Salt Lake flooded, but pumps were installed and the wet cycle stopped. We are unable to completely predict the long-term outcome of the present situation.
Jerry Ratzlaff	10	Concerned about effects to water table in the case of equalization. Basements may experience water problems. Standing water would be insect breeding grounds. Neighborhood infrastructure would also need to be relocated.	The effects of groundwater are not fully known at this time, due to the complexity and speculative nature of predicting effects. However, FHWA will mitigate for any direct effects of the project. If residents encounter problems with basement flooding, FHWA will work with the partner agencies to determine if the problems are a direct result of the project. FHWA will mitigate for any direct effects of the project within the guidelines of the Uniform Act. There may be locations of standing water, this is a problem throughout the Devils Lake area. Any of the build alternatives will have less standing water than the No Action alternative. The project will also include the relocation of neighborhood infrastructure directly affected by the project.

DEC 17 2007

December 13, 2007

Federal Highway Administration (HFHD 16)  
12300 West Dakota Avenue  
Lakewood, Colorado 80228

Attention: Gary Strike, Project Manager

RE: Devils Lake Roads-Acting-As-Dams

Dear Mr. Strike:

There is no way to adequately respond to the immediate question of "Which plan do you prefer. Alternative 3-A ,or Alternative 3-B". "Your response must be postmarked 12/14/07".

1 Firstly, we were never contacted by anyone regarding any kind of impact to property. All that could be delineated from television, or radio was, "Roads that are acting as dams, come join the meeting". Only when the two vehicles filled with you people were discovered in our driveway did we learn the extent and seriousness of your proposal.

2 Sadly, and as usual, the information we did obtain was filled with misinformation, mappings are  
3 flawed, locations of residences are missing. There is no concrete study , or formula, for the displacement  
4 of wildlife, of which some is depended upon for subsistence, (forty different birds feed and nest on this  
5 land), destruction of eco-systems and habitat. Invaluable natural and cultural resources found only in the area will be destroyed and lost forever. No one is addressing the impact of the health and welfare of the people being affected. Moreover, I find the assessment for humans the most egregious. "No disproportionate adverse effect to the minority/low income regardless of the combination of build alternatives". What the hell is wrong with you people? Displace any human, take away, or destroy their property , there is a definite psychological effect.

6 We have no desire to be flooded out. Therefore, what choice is there but to choose alternative 3-B. There isn't enough money to compensate us for the years of hard work that went into our yard filled with trees. The scotch pine were planted 20 years ago, the weeping birch were planted 25 years ago, the evergreens were planted from 20 to 40 years ago, the apple trees were planted 12 years ago, and the mountain ash were planted 23 years ago. Each and every tree is invaluable and important to the eco-system of our environment.

7 Our council woman for the Mission District Lois Leben stated to Peggy Cavanaugh, Director of Public Health that the Spring Lake area and our place was never discussed at any of the meetings held. This land is held in Indian Trust and the Bureau of Indian Affairs is obligated to protect it.

The natural barriers throughout the reservation have been used as road fill thereby destroying what was the beauty of the area and future protection against the lake. Where will the fill come from for the future road repair??

Sincerely,



Edward P. Greene  
8324 39<sup>th</sup> Street Northeast  
St. Michael, North Dakota 58370

cc: Peggy Cavanaugh, Public Health Director  
Lois Leben, Council Woman Mission District  
Rod Cavanaugh, Superintendent Bureau of Indian Affairs, Fort Totten, North Dakota  
Clarence Greene, Supervisor Spirit Lake Roads Department

### **FHWA's response to Mr. Greene's comments:**

1. The Tribe and the FHWA are working on methods to improve timely communication with local residents. A public scoping meeting was held on September 25, 2006. The first time the alternatives were available for public review is when the EA was made available on November 14th and approximately 80 copies were distributed for review. The EA was also available online. Significant efforts were made to notify people that the EA was available. Notice was put out in local flyers, newspapers, radio, and on local television of the EA availability. A public meeting was also held on September 25, 2006 at the SLN casino. Homeowners were sent letters inviting them to an informational meeting on December 5th.
2. The EA was made available for public comment to receive input regarding any missing or incorrect information.
3. FHWA worked with USFWS and with ND Game and Fish regarding wildlife concerns. The FHWA also attempted to obtain information from the Tribal EPA, but did not receive a response. The Devils Lake system is in a state of change, with new habitats being both created and destroyed by the rising waters. FHWA, in conjunction with USFWS and ND Game and Fish, determined that the impacts to wildlife and habitat as a result of the project are minimal compared to the changes occurring in the system overall.
4. Cultural, biological, and wetland studies were conducted as a part of the project process. The FHWA worked with Ambrose Littleghost and the Tribe and with the BIA to identify cultural resources. Impacts to wetlands will be minimized and those that are unavoidable will be mitigated. Cultural resources identified are outside of our project area and will not be affected. If previously unknown cultural resources are discovered during construction, work would stop in the immediate vicinity until the SLN and the State Historic Preservation Officer (SHPO) are notified, in accordance with procedures under 36 CFR Part 800 for analysis and mitigation of discovered impacts during construction. Mitigation measures, if needed, would be developed in consultation with SLN and the SHPO.
5. FHWA understands that the impact to any family or individual may be substantial, however the overall impact to human health and welfare as a result of the project is of net benefit compared to the No Action alternative.
6. Comment noted. Mr. Greene would also be flooded under the No Action Alternative.
7. FHWA understands the responsibilities related to trust land and is consulting with SLN on project alternatives and effects to homeowners.

#### **FHWA's response to Mr. Greene's comments (cont.)**

8. Acquisition of fill will be at the discretion of the contractor and in accordance with existing laws and regulations. Contractor-identified sources will require clearances under the Endangered Species Act, the National Historic Preservation Act, and the Clean Water Act, in addition to following all local regulations. The implementing agency will provide information regarding suitable sites for clay materials within the contract that meet these requirements; however the Contractor can not be forced to use them. However, the FHWA is working with project partners to develop an approval process that will avoid having fill taken from areas that serve as natural barriers to the protected interior area.

**SPIRIT LAKE TRIBE  
RESOLUTION A05-08-040**

- WHEREAS,** the Spirit Lake Tribe, formerly known as the Devils Lake Sioux Tribe of Indians is a federally recognized American Indian Tribe governed by a revised Constitution dated May 5, 1960, approved by the Acting Commissioner, Bureau of Indian Affairs, July 14, 1961, and subsequently amended July 17, 1969; May 3, 1974; April 16, 1976; May 4, 1981; and August 19, 1996; and
- WHEREAS,** the Constitution of the Spirit Lake Tribe generally authorizes and empowers the Spirit Lake Tribal Council to engage in activities on behalf of and in the interest of the welfare and benefit of the Tribe and of the enrolled members thereof; and
- WHEREAS,** the Roads-Acting-as-Dams (hereinafter "RAAD") project purpose is to provide for long-term existence of a safe regional transportation network in the ST. Michael and Acorn Ridge areas by addressing the safety concerns associated with RAAD's.
- WHEREAS,** the RAAD project is currently being administered by and through the RAAD Project Team, whose members include representatives from the Federal Highway Administration, the Spirit Lake Nation, U.S. Bureau of Indian Affairs, North Dakota Department of Transportation, U.S. Army Corps of Engineers, and the Bureau of Reclamation.
- WHEREAS,** the Trust Responsibility of the United States Government, administered by and through the United States Department of Interior (hereinafter "DOI") and the Bureau of Indian Affairs (hereinafter "BIA") is a paramount factor in the decisions that are made by the BIA on behalf of the Tribe as the trust beneficiary. As a Trustee the BIA has a responsibility to manage the trust assets of the Tribe in a manner that is fiscally responsible and in a manner that both protects and preserves trust assets. This responsibility applies to all trust assets, including tribal trust land.
- WHEREAS,** the Spirit Lake Tribe has received and reviewed the "Comments- Environmental Assessment, Section 4(f) Evaluation for the Devils Lake, ND Roads-Acting as Dams Project ND ERFO 1(992) Phase II" wherein the evaluator, at section (9) notes that "The impacts to trust assets on the Spirit Lake Nation are significant...."
- WHEREAS,** the Spirit Lake Tribe, as the trust beneficiary of the aforementioned federal agencies hereby expresses concerns over the protection and preservation of trust lands that may be negatively impacted by the proposed Alternatives set forth by and through the RAAD project and further asserts an expectation that the Alternatives explored and recommended by the federal agencies comprising the RAAD Project team are alternatives which have been developed and being proposed in accordance with applicable trust responsibilities, namely the protection and preservation of trust property and mitigation of losses of the same for the future use and benefit of the Tribe.



**SPIRIT LAKE TRIBE  
RESOLUTION A05-08-040**

**Pg. 2**

**WHEREAS,** several alternatives were explained Public Hearings on the RAAD. Among the alternatives proposed for Zone 2, the Tribe would, upon recommendation of the RAAD Project team partners, support Alternative 2-D which would:

- raise and extend existing perimeter dams, Jetty 1 and Jetty 2, north of ND 20
- Construct a new perimeter dam, approximately 2.2 miles in length, using existing perimeter dams, Geske 1 and 4, and extending across a small bay area to the south of BIA Road 2
- If feasible, pump small bay area south of BIA Road 2 and east of ND 20 into Devils Lake and equalize ND 20 and BIA Road 2

**WHEREAS,** several alternatives were explained Public Hearings on the RAAD project. Among the alternatives proposed for Zone 3, the Tribe would, upon recommendation of the RAAD Project team partners, support Alternative 3-B which would:

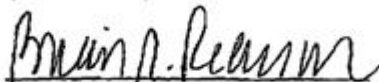
- Build ND 20 as a dam from the unnamed road one mile south of BIA Road 6 to near the access road to the Kurtz Dam, a perimeter dam
- Equalize ND 20 South from the access road to the Kurtz 1 Dam near BIA Road 22
- Construct the Spring Lake Dam, a new perimeter dam
- Extend Kurtz 1 Dam to connect to ND 20 to the west and high ground to the east

**Now Therefore be it Resolved,** that the Spirit Lake Tribe, in reliance on the recommendations set forth by the RAAD Project Team partners and the existing trust relationship between the above-named RAAD Project team partners and the Spirit Lake Tribe, supports Alternatives 2-D and 3-B as set forth above.

**CERTIFICATION**

I, the undersigned, as Secretary-Treasurer of the Spirit Lake Tribal Council, do hereby certify that the Tribal Council is composed of six (6) members, of whom six (6) were present constituting a quorum for a Special Meeting, which was duly called and convened on this 11<sup>th</sup> day of DECEMBER, 2007, and approved this resolution by affirmative vote of four (4) in favor, none (0) opposed, none (0) abstaining, none (0) absent.

(The Secretary-Treasurer does not vote and the Chairperson votes only in case of a tie.)



Brian S. Pearson  
Secretary-Treasurer



Myra S. Pearson  
Chairperson



# SPIRIT LAKE TRIBE

PO Box 359 • FORT TOTTEN, ND 58335 • PHONE: 701-766-4221 • FAX: 701-766-4126

December 14, 2007

Gary Strike, Project Manager  
Attn: Environment (ND 1 (992))  
Federal Highway Administration  
Central Federal Lands Highway Division  
12300 West Dakota Avenue  
Lakewood, CO 80228

Re: Request for Extension of Comment Period on and Supplement to  
*Environmental Assessment Section 4(f) Evaluation for the Devils Lake,  
North Dakota Roads-Acting-As-Dams Project ND ERFO 1(992) Phase II*

Dear Mr. Strike:

On behalf of the Tribal Council of the Spirit Lake Nation, I request that the Federal Highway Administration extend the comment period for the EA on the Roads-Acting-As-Dams Project for an additional 45 days to allow the Tribe and the public to review the EA and provide comment. As discussed below and in the attached comments, I also request that FHWA-FLH provide additional information and analysis of project alternatives and their consequences in order to permit additional and more in-depth tribal consultation and public review and comment.

The Tribe supports the objectives of the RAADs Project – to improve the capacity of certain roads to protect property and communities from the rising water level of Devil's Lake and Stump Lake. However, it is critical that the Project be well-planned, and we believe that additional study of the project alternatives is needed.

The EA was finalized November 1, less than 45 days prior to today's deadline for comment. Review of EA material is a time-consuming and procedural process for a tribal government, and 45 days does not provide adequate time to adequately review this information and prepare comments. Additionally, the citizens of the Spirit Lake Reservation should be allowed additional time to read and review the EA and gather additional information so that they may formulate their conclusions and prepare comments.

Gary Strike, Project Manager  
December 14, 2007  
Page 2 of 3

Additional time also needed in order to permit FHWA-FLH to provide to the Tribe and the public information that is needed in order to fully evaluate the project alternatives and which is not provided or is not clearly stated in the EA documentation. The attached comments approved by the Tribal Council discuss issues which require additional analysis in the EA. The Regional Director of the Bureau of Indian Affairs discussed concerns about the EA's scope in his December 7 letter to you. I also join the Regional Director in his comments presented there. FHWA-FLH should also make available to the public for comment the BIA's comments contained in the December 7 letter as required by 42 U.S.C. § 4332(2)(C).

We know that FHWA-FLH has a high regard and long tradition of respecting tribal consultation consistent with executive orders, including the most recent Executive Order No. 13175. The Secretary's Order DOT 5301.1 defines consultation as "meaningful and timely discussion in an understandable language with tribal governments." It establishes that the Department will "[a]ssess the environmental impact of [D]OT activities on tribal trust resources and ensure that tribal interests are considered before DOT activities are undertaken," which includes "ensuring that the concerns of federally recognized tribes, regarding the potential impact on trust resources, are properly addressed in agency policies, programs, and activities." It also provides that the Department will "[r]espond effectively to the transportation concerns of American Indians and Alaska Natives related to environmental justice, children's safety and environmental health risks, occupational health and safety, and other environmental matters." Finally, it holds that DOT will "[s]treamline DOT procedures for working directly with tribes on activities that affect trust resources or tribal self-governance of the tribes" and "[d]esign solutions and tailor DOT programs as appropriate to address specific or unique needs of tribal communities."

These principles and this same spirit of cooperative government-to-government relations should be applied in the present case. The Tribe's enclosed comments demonstrate that the Department and the Tribe need to engage in further evaluation and discussion of a number of important issues related to the Project. Accordingly, we ask FHWA-FLH to supplement the EA with the information and analysis discussed in the attached Comments and in the Bureau's December 7 letter and to extend the comment period.

I look forward to working with FHWA-FLH to achieve the objectives of the project for the benefit of the residents of the Spirit Lake Reservation and the region while minimizing adverse impacts on trust and natural resources, property and individuals. I also ask that the attached comments be included in the record.

Sincerely,

  
Myra Pearson, Chairwoman

Gary Strike, Project Manager  
December 14, 2007  
Page 3 of 3

Enclosure

cc: John Baxter, Associate Administrator, FHWA-FLH  
Ricardo Suarez, Division Engineer, FHWA-CFLH  
Robert Sparrow, Program Director, FHWA-FLH IRR

**Comments – Environmental Assessment**  
**Section 4(f) Evaluation**  
**For the**  
**Devils Lake, North Dakota**  
**Roads-Acting-As-Dams Project**  
**ND ERFO 1(992) Phase II**

1. The omission of detailed trust acreage lost in Zones 1, 2 & 3 including valuation of the property and potential income lost by inundation of the impacted areas within Zones 1, 2 & 3 is contrary to existing Federal Regulations and Laws. The inclusion and consultation with the Spirit Lake Tribe and Individual Trust Owners is required to be in the Environmental Assessment. The omission and lack of consultation thereof needs to be rectified.
2. Table 3-3 on page 59 references “SLN trust assets (acres)” impacted to the elevation of 1449 feet elevation. The “SLN trust assets (acres)” should have been broken down to separate Tribal Trust from Individual Trust acreage.
3. The meeting held the morning of December 4, 2007 with the Spirit Lake Tribal Council should have been recorded with comments made a part of the record. The meeting with the Tribal Council that covered a briefing as to the Alternatives within each Zone was part of the Environmental Assessment.
4. Zone 4 valuation for estimated costs to construct protective measures to the elevation of 1460 feet did not include the proposed perimeter levees although the same estimated costs were included in Zones 2 & 3. This disparity needs to be addressed as it should not exist within the Environmental Assessment.
5. A determination of acres impacted within Zones 2 & 3 specific to Trust Acres broken down by category for Tribal Trust and Individual Trust is not identified within the Environmental Assessment. Once again, pursuant to existing Federal Regulations and Laws, the omission and lack of consultation needs to be rectified.
6. St. Michael Interior has always been previously defined by all parties as the currently protected area within the St. Michael District. The description used within the Environmental Assessment is different with the assumption that the St. Michael Interior only includes property south of North Dakota State Highway 20. The deviation from the traditionally described St. Michael Interior is inconsistent with the previously known area currently protected by existing Roads-Acting-As-Dams and Perimeter Levees. Federal Highway cannot arbitrarily redefine for the purpose of the Environmental Assessment the St. Michael Interior boundaries confusing the local community that reside within the St. Michael District.
7. The overall failure on Federal Highways part to fulfill the fundamental and long standing legal requirements as “Trustee” to not only the Spirit Lake Tribe but also to the Individual Owners of Trust Property throughout the Environmental Assessment is of a major concern. Simply stated, fundamental legal requirements were either not addressed or inadequately addressed including but not limited to:
  - Failures in the consultation process
  - Failure to appraise impacted trust property

- Failure to address income potential for trust property
  - Failure to record consultation meetings
  - Failure to include specific impacts to trust property
  - Failure to follow existing Federal Regulations and Laws
  - Failure to adequately address potential long term impacts
8. The potential "Buy-Out" of structures impacted within the Environmental Assessment does not include impacted residences within Zone 2 although access may not be afforded as the Lake continues to rise. A significant number of "Buy-Out's" are included however within Zone 4. Regardless of elevation at or below 1449 feet, those residences in Zone 2 would be outside of the currently protected area and continued access may not be afforded them. A "Buy-Out" needs be offered to them as well.
  9. The impacts to trust assets on the Spirit Lake Nation are significant. If the above significant issues cannot be mitigated in a manner acceptable to the Spirit Lake Nation, the Spirit Lake Tribe will be compelled to request that the Bureau of Indian Affairs refer the issue to the Council on Environmental Quality.

*Myra Pearson*  
*Tribeal Chem.*  
*12-14-07*

## Responses to Spirit Lake Nation Tribal Council Comments

*(Responses are italicized, FHWA added numbers to the comments for ease of review.)*

1. Requests an extension to the comment period of additional 45 days to allow the Tribe and the public additional time to review the EA and provide comment and for FHWA-FLH to provide to the Tribe and the public information that is needed in order to fully evaluate the project alternatives.

*The comment period was extended as requested to January 28<sup>th</sup>. District meetings were held January 19<sup>th</sup> (Mission District) and 20<sup>th</sup> (Wood Lake District) to provide tribal members an opportunity to hear more about the project, to ask questions, and to offer input. The meetings were formally recorded by a court reporter. Copies of the meeting transcripts were sent to Tribal representatives.*

2. Tribe supports objectives of the RAADs project - to improve capacity of certain roads to protect property and communities from the rising water of Devils Lake and Stump Lake. However, it is critical that the project be well planned, and they believe that additional study of the project alternatives is needed.

*FHWA initiated conference calls with the Tribe on January 9<sup>th</sup> and February 1<sup>st</sup> to clarify this comment. The additional studies were identified as those requested by the Tribal Health Department.*

3. **Tribe Comment 1.** EA omits detailed trust acreage lost in Zones 1, 2 & 3 including valuation of the property and potential income lost by inundation in the impacted areas within Zones 1, 2, and 3.

*The EA, beginning on page 98, includes detailed quantity estimates for Tribal Trust and Allotted Trust property impacted by right-of-way for Zones 1, 2 and 3 as well as information regarding Trust acreage potentially inundated by equalization in Zones 1 and 3. Tables 3-15 and 3-16 specifically analyze Tribal Trust and Allotted Trust. Trust assets by Tribal Trust and Allotted Trust are also included in the Land Use and Ownership section beginning on page 81 and include tables 3-8, 3-9, 3-10, and 3-11.*

*It is correct that the EA does not include a detailed cost comparison of the Tribal and Allotted Trust acreage. Table 3-4 in the EA provides only a summary of costs for each build alternative. FHWA does not agree that inclusion of specific property cost information within the EA is appropriate. Regulations require that the EA complete a general evaluation of property costs to avoid improper selection of alternatives. The Executive Committee (EC), at their October 5, 2007 meeting, agreed to evaluate the alternatives on a lowest to highest basis, i.e. the alternatives with the fewest property impacts were identified as best meeting that evaluation category. It is anticipated that if new values were provided that the alternatives currently identified as “preferred” for the “ROW” and “Property Relocated” evaluation criteria would not change. Property value estimates of \$350 per acre and \$150,000 per residence relocation used in the EA were supplied by the BIA and were based on the Phase I project appraised land*

values and past relocations completed by the BIA. Since this data is relatively current it is not expected to change drastically.

*Also, after the environmental process has been completed and a preferred alternative has been selected, the BIA and the Tribe will be leading the acquisition process, which includes appraisals. The appraisals will provide the Tribe the detailed information (e.g. valuation of the property, lost lease income, cost to cure, relocation benefits, etc.) being requested for each property directly impacted by the proposed project.*

**4. Tribe Comment 2.** Table 3-3 on page 59 references "SLN trust assets (acres)" impacted to the elevation of 1449 feet elevation. The trust assets should have been broken down to separate Tribal and Individual trust acreage.

*Table will be edited to reflect change. Table 3-3 is a summary table and it was not intended to be independent. Please note the detailed information regarding Tribal Assets available in tables 3-8, 3-9, 3-10, 3-11, 3-15, and 3-16.*

**5. Tribe Comment 3.** The Tribal Council Update meeting on December 4, 2007 should have been recorded with comments and made a part of the record as it was a part of the EA.

*FHWA did not receive any prior requests to record meetings with the Tribal Council. It is not usual practice for FHWA to formally record meetings/consultations held with project partners. As a part of standard practice, FHWA did complete meeting notes for the December 4<sup>th</sup> meeting and distributed them to the Tribal Council. FHWA did agree to provide a court recorder for the district meetings and the Tribal Council meeting held March 11<sup>th</sup>.*

*The Tribe and FHWA agreed that Tribal Council meetings in the future did not need to be formally recorded. FHWA would complete the meeting notes and provide them to the Tribe. The Tribe would be responsible for reviewing them and providing any edits.*

**6. Tribe Comment 4.** Zone 4 valuation for estimated costs did not include the proposed perimeter levees although the same estimated costs were included in Zones 2 and 3. This disparity needs to be addressed as it should not exist within the EA.

*Costs for the perimeter levees were not included in the analysis because the levees are not a part of this project, unlike in the other zones. They will be part of the City or County levee system and will be funded, designed, and constructed by others, as described beginning on page 37 of the EA. The levees were included in Figure 2-13 to highlight the potential need for future planning for these levees. The EA will be edited to include these costs per the SLN request. The perimeter levees are estimated to cost \$1.4 million and the addition of these costs does not change the standing of this alternative according to the cost evaluation criteria, i.e. it is still the least expensive alternative.*

**7. Tribe Comment 5.** A determination of acres impacted within Zones 2 and 3 specific to trust acres and broken down by category for Tribal Trust and Individual Trust is not identified with the EA. Omission and lack of consultation needs to be rectified.



*The EA contains a discussion of impacts to Trust assets beginning on page 98. Tables 3-15 and 3-16 specifically analyze Tribal Trust and Allotted Trust. Trust assets by Tribal Trust and Allotted Trust are also included in the Land Use and Ownership section beginning on page 81 and include tables 3-8, 3-9, 3-10, and 3-11.*

**8. Tribe Comment 6.** St. Michael Interior has previously been identified as currently protected area within the St. Michael District. The EA changes the St. Michael Interior definition and confuses the local community.

*The FHWA and the Tribe agreed to change the term "St. Michael Interior" to read "Commonly Protected Area" throughout the EA.*

**Tribe Comment 7.** FHWA-FLH failed to fulfill the fundamental and long standing legal requirements as "Trustee." Fundamental legal requirements were either not addressed or inadequately addressed including, but not limited to:

#### 9. Failures in the consultation process

*Title 25 [§170.100](#) CFR describes consultation as “government-to-government communication in a timely manner by all parties about a proposed or contemplated decision in order to: (1) Secure meaningful tribal input and involvement in the decision-making process; and (2) Advise the tribe of the final decision and provide an explanation.” Consultation is generally used when the tribe and the Federal agency have different goals. Collaboration, on the other hand, is defined such that “all parties involved in carrying out planning and project development work together in a timely manner to achieve a common objective.” It is used when the tribe and the agency have shared interests and goals, as on this project*

*The FHWA believes that it has consulted with SLN regarding the project. In fact because the Tribe is a project partner, FHWA believes the consultation has been a collaborative process. The Tribe has been represented at almost all of the project meetings throughout the project development process. However, based on comments received on the EA it is evident that some of the representatives from the Tribe that should have been included in the development of the project were not.*

*The Tribe and FHWA agreed to continue with consultation as it has been occurring, specifically in Project Delivery Team and Executive Committee meetings. The SLN, BIA, and FHWA will consult regarding meetings with tribal members as the process proceeds. This may include personal meetings, District meetings, or informational mailings. Meetings will be scheduled through the Tribal Secretary, who will contact the Tribal Representatives. The Tribal Secretary will also serve as the point of contact for information distribution.*

#### 10. Failures to appraise impacted trust property

*As discussed in more detail under item 3 the appraisal of property does not typically occur until after NEPA is complete. This means that a preferred alternative has been selected and final*

*design has been developed to level that accurate impacts can be determined. The FHWA is not aware of any specific trust responsibility which requires appraisals during the environmental process. The FHWA provided the Tribe with a detailed cost estimate for estimated Tribal and Allotted Trust impacts based on values provided by the BIA.*

*The Tribe and FHWA agreed that detailed appraisal information does not need to be included in the EA and that estimated values may be used for the analysis of alternatives.*

#### 11. Failure to address income potential for trust property

*The FHWA provided the Tribe a list of current income for each Trust property that may be affected on all proposed alternatives. The Tribe and FHWA agreed that this information was not required to be included in the EA and that income potential will be considered as a part of the appraisal process.*

#### 12. Failure to record consultation meetings

*FHWA did not receive any prior requests to record meetings with the Tribal Council. It is not usual practice for FHWA to formally record meetings/consultation held with project partners. As a part of standard practice, FHWA did complete meeting notes for the December 4<sup>th</sup> meeting and distributed them to the Tribal Council. FHWA did agree to provide a court recorder for the district meetings and the Tribal Council meeting held March 11<sup>th</sup>.*

*The Tribe and FHWA agreed that Tribal Council meetings in the future did not need to be formally recorded. FHWA would complete the meeting notes and provide them to the Tribe. The Tribe would be responsible for reviewing them and providing any edits.*

#### 13. Failure to include specific impacts to trust property

*The EA includes specific impacts to Trust assets beginning on pg. 98. Tables 3-15 and 3-16 specifically analyze Tribal Trust and Allotted Trust. Trust assets by Tribal Trust and Allotted Trust are also included in the Land Use and Ownership section beginning on pg. 81 and include tables 3-8, 3-9, 3-10, and 3-11. The FHWA did not receive any comments regarding the impacts to trust property during the administrative EA review process from October 4, 2007 to October 19, 2007.*

#### 14. Failure to follow existing Federal Regulations and Laws

*FHWA clarified with the Tribe that this comment is related primarily to trust responsibilities. Please refer to responses related to trust responsibilities for responses to this comment.*

#### 15. Failure to adequately address potential long term impacts

*The Tribe clarified that this comment was primarily related to groundwater, but also included the other impacts in comments from Tribal Health Department. Please refer to the responses to the Tribal Health Department comments for responses to this comment.*

**16. Tribe Comment 8.** Potential "Buy-Out" of structures within the EA does not include impacted residences within Zone 2 although access may not be afforded as the Lake continues to rise. A significant number of "Buy-Out's" are included however in Zone 4. Regardless of elevation at or below 1449 feet, those residences in Zone 2 would be outside of the currently protected area (or outside potential future unprotected area in the event of a rise in water level) and continued access may not be afforded them. A "Buy-Out' needs to be offered to them as well.

*First, FHWA would like to clarify the use of the term "buy-out". Impacts to each property will be evaluated based on the particular situation and the appraisals will reflect the proposed compensation. Evaluation of impacts of the project will occur on a case-by-case basis. Mitigation for impacts could range from restoration of access, to compensation for loss of a small portion of land, to compensation for the entire property.*

*Secondly, the EA does not consider the inundation of the area behind existing levees in Zone 2 to be a direct effect of the project and therefore does not include this area in the direct effects discussion. The existing levee system is currently providing protection and is not unsafe. Therefore, there was not reason to inundate that area under any of the alternatives that did not utilize the existing levee system. The levees could remain in place until and unless the Lake rises. The levees are owned by the Tribe and any future controlled inundation of the levees was not considered part of the project.*

**17.** The impacts to trust assets on the SLN are significant. If the significant issues cannot be mitigated in a manner acceptable to the SLN, the SLN will be compelled to request that the BIA refer the issue to the CEQ. (Tribe Comment #9)

*FHWA has collaborated with both the SLN and the BIA since the inception of the project. FHWA hopes that this collaborative effort will continue and these issues can be resolved. However, FHWA recognizes that SLN reserves the right to request elevation of issues that it feels remain unresolved.*



## *Health Administration*

*Spirit Lake Tribe*

P.O. BOX 480  
FORT TOTTEN, NORTH DAKOTA 58335

August 14, 2007

Gary Strike, Project Manager

Attn: Environment (ND 1(992)

Federal Highway Administration

Central Federal Lands Highway Division

12300 West Dakota Avenue

Lakewood, CO 80228

Re: Comments on Environmental Assessment Section 4(f) Evaluation for the Devils Lake, North Dakota Roads – Acting-As-Dams Project ND ERFO 1(992) Phase II

Dear Mr. Strike:

Thank you for the opportunity to present comments on the Environmental Assessment (EA) evaluation of the Devils Lake, North Dakota roads- acting-as-dams project. I submit these comments on behalf of the Spirit Lake Tribal Community Health Department.

As the Tribal Health Director/Planner for the past 18 years, I was assigned by Chairman Elmer White and his predecessors, to serve as the Tribe's first Emergency Management Coordinator from 1993 through May 1997. My comments are drawn from this experience and from my position as Health Director. A vital component of the Health Department is to provide water and sewer construction services through contract with the Indian Health Service. As such, our department is primarily responsible for conducting test pits for new sewer placement (which shows ground water status), and working with well service drilling (which showed problems areas of wells drawing sand, areas where historically there was water).

Upon reviewing the EA I have found that there is additional information that must be included. Further, the EA contains misleading and inconclusive information. I request that FHWA supplement the EA to address the issues below and allow time for comment from the public and our Tribal government. Not until this is done will it allow for a true comment period, in which the public has the information to make informed comments as to this federal project's impact or affect to the environment and to the public's lives and well being.

Our lands have been a federally declared disaster area for 12 years, and the recovery effort continues. This history requires particular caution in evaluating the Project alternatives. This information is greatly needed to prepare the Tribe for the impact into the future. A speedy process does not allow the sort of study that is needed.

## **1. Introduction/Historical Summary**

As you may know, for all but one year from 1993 to 2004 the Spirit Lake Tribe's reservation was declared a federal disaster area. The Spirit Lake Tribal lands began flooding one year prior to the lake actually began its rise. In 1992 the Tribe had over 25 contaminated wells, including wells blowing their caps due to underground pressure and over 20 failing septic systems backed up into basements all occurring at the same time. At that time cause for these events was unknown, all we knew was - we had a critical pending health emergency. In the years to follow we learned the makeup of our geology and hydrology is what caused the Spirit Lake to flood first.

Spirit Lake has five aquifers underlying our lands and has a natural spring system that runs the entire length of our reservation from east to west. The geology that makes up our lands is affected by being at the end of a melting glacier. The Sully's Hills are the end of the glacier and as it melted we received our hill known as *Cante Paha*, or Devils Heart; there are only two of this type of hill in the nation.

During the flooding our department received calls from homeowners saying that where they once had good water it had gone bad and where the water had been bad it turned good. We had test pits on hills above 1460 elevation that hit ground water at 2 ft. We placed homes in seemingly dry areas that within two years were flooding. Due to the changes in water levels we voiced our concern to IHS to make sure they did not drill wells at a more shallow depth due to hitting water sooner, as one day they may run dry. During this time there were hundreds of ground water flooded basements (2-8ft water filled basements), sewers backing up, foundations stability affected due to water pressure, and mold. The flooding impacted access to health care, emotional and mental health, displacement of homes and families, displacement/forced relocation of our animal population, who were flooded out of their habitat and moving into human habitat, loss of our land, and many natural resources and plants.

The impact of the flooding to our Tribe environmentally, socially and economically is immeasurable. From this account of experiences and factual accounts of flooding/environmental/water quality impact for 12 years of disaster and an incalculable amount of years to come of recovery efforts, I submit my comments and my request.

## **2. Comments**

I understand and respect the need for this project:

RAADS were not originally designed and constructed as dams and so they do not contain features necessary for the safe impoundment of water. As a result, pose a safety threat to the traveling public and those individuals who are currently protected by the RAAD from the rising waters of Devils Lake.

The expedience of this project is also critical. However, we cannot as a Tribal Nation forego proper extensive review of the impact to the future of our environment and Tribal resources for our children.

According to the National Environmental Policy Act of 1969 the purpose was to

[I]mprove and coordinate Federal plans, functions, programs, and resources to the end that the Nation may – 1. Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations; 3. Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences; 4. Preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice.

These requirements have not been fulfilled, in part, due to the insufficient and incomplete information presented in the EA and at the December 2007 public hearing.

**Impacts on Hydrostatic Pressure.** The EA does not contain information related to impacts of hydrostatic pressure. It would take a lot of test holes to determine the hydrostatic pressure. Which agency is responsible for conducting these tests? Are their hydrologists and geologist-scientists or experts available within your agency to help with this? This is a major concern.

Underground water pressure has also in our past impacted the alignment of rural waterline and community sewer systems, having them bow; separating and weakening at joints in the pipes. We have as a Tribe had to remove these areas from access to new home development, in order to minimize further stress to the weakened system.

**Impact on Surrounding Homes and Sewer System.** The EA does not appear to clearly address the equalization and the impact to the surrounding homes near the shoreline due to the new weight of moved water resulting from the project. This must be identified as a potential impact and we need to identify in advance what the possible cost to the Tribe may be for home relocation or replacement of failed sewer systems.

The need for more complete information for the Tribe, is due to the need for our government to access the all the facts, evaluate the long term hidden financial burden that will only be held by the tribe and their already underfunded federal service program budgets. The disparity between our current inability to meet need and any created additional need from not properly assessing all the potential impact to our people, infrastructure, environment, health and economy from these various three zones of potential project construction will devastate our Tribe.

**Specific information from the EA is missing or misleading.** I understand that up to 1449 feet elevation, the Project proposes to reimburse homeowners and business owners for relocation. This is a critical part of the Project plan and its impacts. This elevation line should be shown on the maps.

The report, pictures of alternatives and the schedule of values chart are all documented at 1460-1468 protection. This was not clearly understood at the onset until more questions and clarification was asked for. If this federal agency is building at 1452-1455 in phases or stages then this should have been shown to the public so that we could comment, ask questions and seek to understand the realistic work being done within the funding available and evaluate the impacts from that perspective.

The hatch marking showing up the 1460 line should be differentiated from the actual area of impact to the areas where equalization is proposed. This impacts the Tribe by us not having actual impact lines where we must evaluate impact to our lack of access to people for health care, EMS, emergency response of any kind.

This report was developed to show protection at 1460-1468. There are insufficient funds to construct at this level nor was it found to be in the best interest of federal stewardship of project dollars to invest at this level. This is not reflected in the visual pictures for the people to comment on, the actual lower elevation that is proposed should have been shown in the report for people to view and make comments on. This causes confusion and is misleading information. Also, a personal perception is that it may have caused less stress, more understanding for the home owners to see the variances; even though it is important to see the no action and highest potential action needed scenarios.

There are three important impact map line numbers vital to the Tribe in order to evaluate impact to our government, a line of 1449 – the guaranteed federal pay number for this project under the act and its objectives, a line of 1452-1455 the proposed phase II/initial stage build for the selected alternative, within the first \$70 million and a third line or legend identification needs to show the Right of Way affect line in the project zone areas at the actual realistic build elevation. We are aware that anything above 1449 that is impacted will be referred to FEMA or NFI, of which neither has been a very positive experience for us in recovery efforts from our 12 federally declared disaster years. This then means that this is a direct fiscal effect to the Tribe.

**Impact to Animal Species.** The EA report only discussed endangered/sensitive species of animals and impact to them. We as a Tribe have experienced excessive increase in clinical visits to our health care facility for what IHS calls bites, stings and venom injuries in the past 8 years. Reports from the public on movement of animals into housing areas and home areas are also increased, occurrences substantiating health impact. Reports of increase in coyotes to home living areas and causing concern for children's safety. We request that the EA specifically address these issues.

In altering the flow of water through/within either of the 3 project zones, there is not an assessment of the risks to the ecosystem of the fish and wildlife natural to these areas. It has been quoted that it could take 10-15 years of impact recovery for such destruction and such interruption to this habitat system. Changes in a system affect whether the fish stay and affect the population within our Tribe who principally rely on fish and wildlife for subsistence.

Our Native American community has a majority of low income families many of whom hunt and fish for subsistence. The EA must address impacts on the wild game fish on which many of our people for their livelihood and feeding their families.

The EA does not contain sufficient information to fully assess environmental impacts that should be avoided in order to fully protect the environment.

There is not an identified location of where disturbed wetlands would be relocated – if it is within the reservation, where and what is the environmental impact to the new area.

**Impact on Transportation and Safety.** The EA should address road safety issues presented the extreme elevation of the newly proposed raised roads of Phase I and II. For example, safety road guards and markings for night travelers should be included. Tourism, fishing, hunting, casino events and local



tribal cultural events bring in visitors who are not familiar with the area or the roads. The extreme changes in winter weather will increase risk of vehicle crashes and the lake level being anywhere from 10 to over 30 feet deep along the roadways is of concern for over 5 deaths from vehicles landing in the lake. We are greatly aware and acknowledge that a no action alternative is also of great impact for our ability to meet the health care needs and access to health care services for our people.

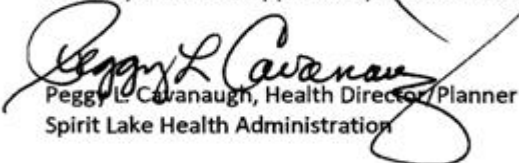
The health department would like a copy of the proposed traffic relocation plan prior to the beginning of construction for use by EMS, CHR, Patient Transport, and other health care providers for access planning.

**Impact on Traditional Herbs used for Medicinal Purposes.** Historically, through oral history of our relatives there are natural medicines and herbs know only to be available at Spirit Lake and no other reservation lands, there is little mention of the impact to our traditional plant life.

**The EA is not concise and understandable.** To ensure adequate public participation and access to information, federal agencies must provide, "use of public documents that are concise and understandable." It should be noted in a sequential order by alternative which would be the zone of greatest weight in regard to risk and loss.

- On page 11 of the report, reference to TERO and Business License needs correction and clarification.
- There should be no fill borrow areas taken within a certain radius before the lake shoreline or near natural drainage areas, for the protection of our natural land barriers and our future.
- The information reaching the community members in the impact zones as not been reached.
- It is not clear whether comments on the alternatives should use the 1460-1468 or the 1452-55 Phase II build line.
- It appears there are homes within impacted zone areas not noted as impacted in this report (Zone 3).

I thank you for this opportunity to comment on such a project.



Peggy L. Cavanaugh, Health Director/Planner  
Spirit Lake Health Administration

cc; Tribal Council  
Rod Cavanaugh, Superintendent / Ft. Totten Agency  
Dr. Sarah Dye, Acting Area Director/ Indian Health Services  
Jon Fogarty, Area OEH Director/Indian Health Services  
Health file



COMMENT SHEET  
Tribal District Meetings

Spirit Lake Roads-Acting-As-Dams January 28, 2008

Name: Peggy L. Cavanaugh, Health Director/Planner	Peggy L. Cavanaugh, Tribal Member
Address: PO Box 480	8297 40 <sup>th</sup> St. NE
City/State/Zip: Ft. Totten, North Dakota 58335	St. Michael, North Dakota 58370
Representing: Spirit Lake Department of Health	Self as Tribal Member

Yes, would like to remain on mailing list as project progresses.

\*\*\*\*\*

Gary Strike, Project Manager  
Attn: Environment (ND 1(992)  
Federal Highway Administration  
Central Federal Lands Highway Division  
12300 West Dakota Avenue  
Lakewood, CO 80228

Re: Comments on Environmental Assessment Section 4 (F) Evaluation for the Devils Lake/Spirit Lake,  
North Dakota Roads-Acting-As-Dams Project ND ERFO 1 (992) Phase II

Dear Mr. Strike:

Thank you for the opportunity to present additional comments on the Environmental Assessment (EA) evaluation of the Devils Lake/Spirit Lake North Dakota roads-acting-as dams' project following our Tribal District Meetings. I submit these comments on behalf of the Spirit Lake Community Health Department and also as a Tribal Member of the Spirit Lake Tribe.

- Overtopping while in Phase 2, Stage 1 interim or any other, FHWA should not isolate itself for project directive only; as part of their planning, collateral resource identification for interrelated federal service impact must be a component. There should be mandated a committee member duty or separately assigned member for the duty of assuring federal agency collateral and collaborative efforts to address impacts caused or projected, due to the Raads activity. IE – indentify dollars or resources for interim flooding/overtopping due to lake raises. Zones not included in whichever phases currently chosen, will they hold their negative roads as dams status and continue to not be eligible for FH road dollars or will the fact that the 4 zone system has been declared as work in progress, allow the Tribe to access disaster dollars needed, if declared?
- RAADS committee should officially notify all Federal agencies providing services or funding into the Spirit Lake Tribe of this projects objectives, progress, and keep them current throughout the project period. As this will impact tribal program service planning and budgeting efforts for the

entire length of the RAADS efforts. If this is not done honestly and efficiently, any effects of cost will eat up local construction and service costs in our annual underfunded Tribal and program budgets.

- A major objective should include an effort to assure a notification to, special designation of Spirit Lake Tribe's impact and special additional appropriations for the U.S., DOI-BIA Roads & Spirit Lake Tribal Roads - local department specific, to meet road construction, maintenance needs as part of the collateral impact during the RAADS project.
- It was shared that operations and maintenance will be added to the local BIA Roads Inventory and we will assume responsibility – will the dollars identified as O&M per Zone and Phase development be added to the federal budget process, in line with the annual federal practice of planning budgets 2 years in advance? (i.e., currently 2010 budget is in formulation). Will the O&M dollars be included for annual increases for inflation or increase of expense for O&M? Will the federal funding request/ budgeting for O&M include contract support for administration overhead? This is critical as development of a funding base may one day affect potential PL 93-638 self determination efforts into the future, if so decided one day by the Tribe.
- It is understood that soil testing identifies where borrow areas are located for contractors use. The Spirit Lake Tribe, BIA Realty, and Spirit Lake Roads Department should make every effort possible, that tribal lands and Tribal Landowners lands are prioritized for earth resource use. Due to the amount of land already lost by SLT and Tribal landowners. We the efforts of equalizing we will see more loss. No Tribal earth should leave the reservation unless the cost not less than or is equal to that which would be paid to off reservation landowners.
- When building up roadways it should be mandated that proper lighting, signing, reflectors, barriers, and/or guard rails are planned for and placed along our new high roadways, where most appropriate upon review by DOT/FHWA for lake crash intervention and prevention.
- In Zone 3 alternatives please clarify whether the home of Carrie Red Day is under 1449 or not, meeting coverage by funding of this project if needed. This important to know for Tribal budget systems impact.
- No Chart breakdown for Zone I
- What was the cost of BIA 4&5 work done to date is this amount subtracted from the current total cost shown in the report?
- Zone 3 project lines not inclusive to BIA 6.
- It is imperative that the question needing clarification, made by Bonita Morin at the Mission District meeting, on the status of this law vs. loss of Federal Disaster declarations be answered.
- The visual presentation at the district meetings was of very poor quality. There should have been a projection screen available and not shown on a brick wall. It was shared with me by elders at both meetings that the sound was bad due to having it in a gym and they could not hear what was being said.
- Once we have equalization on the Tribal side of the lake, it opens the doors for further flooding as the lake rises as a whole. The Tribe is affected more and will lose more due the Devils Lake Dike stopping a northern direction of equalization. This puts the weight of loss on the Tribe.

- FHWA should ensure that tribal and individual property interests in trust lands are protected when flooded and that the Tribe's reservation boundary is protected. A number of questions arise in connection with property interests in the project. On page 135 of the EA document it states that "Owners of [Indian trust assets] that would be immediately inundated due to equalization of RAAADs would be provided the option of being compensation for in accordance with the Uniform Act." What does "immediately" mean in this context? Also, would such property owners retain ownership of the property after receiving such compensation? Finally, how would inundation due to equalization of RAAADs that is not "immediate" affect interests in Indian trust assets?
- The maps provided with the total breakdown of 1449, 1455, and 1460 and so much vital detail, as requested, will be a great resource to allow clarification of impact to our Tribe. Mr. Strike was to forward additional areas as requested, we look forward to receiving these important tools, in order for our tribe to make a complete review and a total assessment of impact by these project objectives. Thanks for your help in getting these prepared.
- Thank you for the additional time taken to explain this to the Tribal Community members

## Responses to Spirit Lake Nation Tribal Health Department Comments

1. Impacts on hydrostatic pressure. The EA does not contain information related to impacts of hydrostatic pressure. It would take a lot of test holes to determine the hydrostatic pressure. Which agency is responsible for conducting these tests? Underground water pressure has also impacted utilities.

2. Impacts on surrounding homes and sewer system. EA does not appear to address the equalization and the impact to surrounding homes near the shoreline due to the new weight of moved water resulting from the project. This must be identified as a potential impact and the EA needs to identify in advance what the possible cost to the Tribe may be for home relocation or replacement of failed sewer systems.

*FHWA has discussed items 1 and 2 with the Tribal Health Department. Tribal Health clarified that this issue is related to the areas of equalization. FHWA explained that even a detailed study would only provide general groundwater information and would not provide the detailed groundwater information requested by Tribal Health, i.e., down to an individual house level. Appendix C of the EA includes a memorandum from FHWA's hydrologist on this issue.*

*The Tribe and FHWA agreed this matter will be addressed in a Memorandum of Understanding between SLN and the FHWA. The MOU will address the issue of impacts due to groundwater changes as a result of inundation. FHWA will agree to mitigate for any impacts that are determined to be a direct effect of the project. The SLN and FHWA will Collaborate to determine if future impacts after equalization are a direct effect. The Tribal Health Department will provide the FHWA with a list of homes that might be affected.*

3. Specific Information from the EA is missing or misleading. 1449 feet elevation should be shown on the maps. Pictures of alternatives and schedule of values are shown at 1460-1468 feet. This was not clearly understood. If Federal Agency is building at 1452 to 1455 in phases or stages then this should have been shown to the public so that we could comment. There are three impact map line numbers vital to the Tribe in order to evaluate impact to our Government, a line of 1449 the guaranteed federal pay number, a line of 1452-1455 the proposed phase II/initial stage build, and a 3rd line that shows ROW affect line.

*FHWA evaluated the 1460 Lake elevation to describe potential impacts for the completed project, as described on page 53 of the EA. It is anticipated that the first stage of Phase 2 will be constructed to 1455 feet. However, the actual project stage elevations are not currently known and are dependant upon available funding and design considerations. In regards to the maps, we attempted to include more information on the EA maps and determined that the maps became too cluttered and were confusing when viewed at 8.5x11 or 8.5x14. Inundation areas under equalization were included separately in Figures 3-11, 3-12, and 3-13 in an attempt to avoid confusion. Additional information was included in Appendix E and F. FHWA understands the Tribe's need for more detailed maps and provided the Tribe and the BIA maps (hardcopy and electronic) that included multiple contour intervals and property ownership information to better visualize and identify impacts.*

4. Impact to animal species. EA report only discussed endangered/sensitive species of animals and impact to them. EA needs to address other animals such as coyotes (moving into housing areas), increased chances of bites, stings, and venom injuries and impacts to fish resources. EA does not contain sufficient information to fully assess environmental impacts that should be avoided to fully protect the environment. There is no assessment of the risks to the ecosystem of the fish and wildlife. Tribal members rely on fish and wildlife for subsistence.

*FHWA worked with USFWS and with ND Game and Fish regarding wildlife concerns. FHWA and their contractor, ERO, made several attempts to contact the Tribal EPA regarding fish and wildlife concerns, but received no response. The SLN identified that the appropriate contact would be the Tribal Fish and Wildlife Department. FHWA sent a copy of the EA to that office following the 3-10-08 Tribal Council Meeting. FHWA will include the Tribal Fish and Wildlife Department as a part of the project team. The Devils Lake system is in a state of change, with new habitats being both created and destroyed by the rising waters. These changes in habitat will result in ongoing changes to wildlife habitat use patterns. Fishing in Devils Lake will likely continue to improve. FHWA, in conjunction with USFWS and ND Game and Fish, determined that the impacts to wildlife and habitat as a result of the project are minimal compared to the changes going on in the system overall. Additionally, all build alternatives have less long-term impact on terrestrial wildlife in terms of loss of habitat than the No-Action alternative.*

5. There is not an identified location of where disturbed wetlands would be relocated. If it is within reservation, where and what is the environmental impact to the area.

*Wetland restoration areas have not yet been identified. FHWA is currently investigating preliminary options and will discuss these areas with the Tribe. The SLN stated that they would prefer that wetland impacts are mitigated within the SLN. FHWA will include SLN in discussions with USFWS and USACE to approve wetland mitigation areas.*

6. Impact on Transportation and Safety. The EA should address road safety issues presented the extreme elevation of the newly proposed raised roads of Phase 1 and 2. For example safety road guards and markings for night travelers should be included.

*The PDT discussed this and recommended the number of delineators be increased in areas near water, as was done on Phase I, although all details will not be determined until final design. On Phase I project delineators were in place every 200 feet and were offset on each side of the road so there was delineation every 100 feet. New striping will also provide positive delineation. The ND DOT confirmed they increased delineators spacing to every 1/10<sup>th</sup> mile on elevated sections of road. Clarence Green, Director of Tribal Roads, has agreed to review the Phase 1 design with tribal members. The FHWA does not recommend guardrail in these sections due to concerns with drifting snow and subsequent icing. Also, the final slopes for RAADs will be 4H:1V which are considered recoverable in conformance with the AASHTO Roadside Design Guide. This means that a vehicle that leaves the road can get back on the road.*

7. Health department would like a copy of the proposed traffic relocation plan prior to the beginning of Construction for use by EMS, CHR, Patient Transport, and other health care providers for access planning.

*The Tribal Roads Department and FHWA will provide the Tribal Health Department with a copy of the traffic relocation plan. Standard contract requirements will provide for emergency access during construction.*

8. Impact on Traditional Herbs used for medicinal purposes. The EA includes little mention of the impact to traditional plant life.

*FHWA and its contractor, ERO, made several attempts to contact the Tribe regarding important cultural properties, however Traditional Herbs were not identified. SLN suggested asking tribal elders to identify important plant resources areas. The FHWA, the BIA, or Tribal Roads Department will hold a meeting during final design with Tribal members to identify plants that are of concern. The FHWA, the BIA, and the SLN will consult on appropriate mitigation.*

*The Tribe and FHWA agreed this matter may be addressed in a Memorandum of Understanding. The MOU will address the issue of loss of traditional medicinal plants as a result the project.*

9. The EA is not concise and understandable. Federal agencies must provide, "use of public documents that are concise and understandable." The EA should list out what will be lost to the tribe.

*FHWA recognizes that the proposed project is complicated and has done its best to provide a concise and understandable document. FHWA provided an administrative draft of the EA to all partner agencies, including SLN, and specifically solicited comments throughout the process to improve clarity. Impacts to the Tribe and Tribal resources are detailed throughout Chapter 3 of the EA. The additional District Meetings held allowed the FHWA to provide additional information to the Tribe which provided a greater understanding of the impacts to the Tribe.*

10. Page 11 TERO and Business License needs correction and clarification.

*FHWA will consult with the Tribal Tax Department to ensure that tax and license information provided in the EA is accurate.*

11. There should be no fill borrow areas taken within a certain radius before the lake shoreline or near natural drainage areas, for the protection of our natural land barriers and our future.

*Limits on the acquisition of fill material will be coordinated with the localities. No fill will be acquired below 1460 or in areas which could result in inundation of protected interior areas. The FHWA commits to facilitating discussions during final design with project team members to develop a borrow approval process for the project.*

12. The information reaching the community members in the impact zones has not been reached.

*A public scoping meeting was held on September 25, 2006. The EA was made available on Nov. 14, 2007. Notice was put out in local flyers, newspapers, radio, and on local television of the EA availability. Public hearings were held December 3<sup>rd</sup> and 4<sup>th</sup> at the SLN casino and the Lake*

*Region State College, respectively. Potentially-affected homeowners were sent letters inviting them to an informational meeting on December 5th. FHWA conducted district meetings January 19<sup>th</sup> and 20<sup>th</sup> in a further attempt to relay information to community members. Although FHWA is available to discuss any concerns or comments, communication within the tribal structure is beyond the responsibility and capability of FHWA and remains the responsibility of SLN. The SLN and the FHWA discussed that direct mailings seemed to be the best method of communicating with tribal members.*

13. It is not clear whether comments on the alternatives should use the 1460-1468 or the 1452-55 Phase 2 build line.

*Comments on the alternatives for any of the elevations were welcome during the public comment period.*

14. It appears there are homes within impacted zone areas not noted as impacted in this report (zone 3).

*FHWA worked with the PDT to identify homes potentially impacted. The EA provides an estimate based on information known to date. During final design actual residences impacted may differ from the estimate. The SLN and the FHWA verified the homes impacted. Additionally, the appraisal process will identify any other structures to be impacted such as outbuildings.*

15. A Federal employee should be designated to continue collaborative efforts with the tribe and to keep the tribe informed of the project progress. This person could serve as a liaison in the case of any problems with the project. This person can also coordinate with other Federal agencies that work with the Tribe. Tribal offices need to be kept apprised of the project so that they can budget and plan for effects to their resources.

*The FHWA has requested that the BIA contact can function in this capacity. The SLN, the BIA, and the FHWA will also set up a team to review supplemental impacts. The team can review maps and identify those portions of the project that are not eligible for FHWA funding.*

16. Will roads that are not being worked on continue to be ineligible for federal funding? What happens if the Lake rises rapidly as another portion of the project is being worked on? Will there be funding to raise the RAAD quickly?

*In an emergency situation, ER money will be available to raise the roads, as long as the underlying RAADs problem is addressed subsequently. If the road is not made safe at a later date, the funding will have to be reimbursed to the ER program.*

17. Collateral impacts, such as any damages to roads used for haul should be considered a part of the project and be mitigated.

*Road damage caused by construction operations will be mitigated by either the contractor or the implementing agency. The Phase I project required the contractor to repair any roads damaged as a result of construction operations. A statement to this effect was added to the EA.*

18. Where will the monies for the additional O&M work come from? If the BIA does not secure these funds, the Tribe may have to pick up the additional cost.

*Operations and Maintenance funding for the embankments is ineligible for funding by FHWA. The owners of the embankments will be responsible for O&M. The BIA will own the embankments within the SLN and will be responsible for O&M.*

19. Tribal landowners should be prioritized for obtaining fill. Prices paid to tribal members should be equal to that paid off-reservation.

*Acquisition of fill will be at the discretion of the contractor. THE PDT has identified material sources for clay materials on Trust Land. The implementing agency will provide information regarding the suitable sites for clay materials within the construction contract, however the Contractor can not be forced to use them.*

20. Proper lighting, signing, reflectors, guardrail, etc should be included when roads are built up.

*The PDT discussed this and recommended the number of delineators be increased in areas near water, as was done on Phase I, although all details will not be determined until final design. On Phase I project delineators were in place every 200 feet and were offset on each side of the road so there was delineation every 100 feet. New striping will also provide positive delineation. The ND DOT confirmed they increased delineators spacing to every 1/10<sup>th</sup> mile on elevated sections of road. Clarence Green, Director of Tribal Roads, has agreed to review the Phase I design with tribal members. The FHWA does not recommend guardrail in these sections due to concerns with drifting snow and subsequent icing. Also, the final slopes for RAADs will be 4H:1V which are considered recoverable in conformance with the AASHTO Roadside Design Guide. This means that a vehicle that leaves the road can get back on the road.*

21. Was Phase I work included in the total costs given for the project?

*No, the EA includes only Phase II costs.*

22. On the Project Zones map, Zone 3 does not go far enough North to BIA 6

*This will be corrected in the EA.*

23. Devils Lake dike is increasing flooding on the Tribal land, putting more burden on the Tribe.

*This comment is outside the scope of this project. However, it may be noted that a USACE study looked at the change in stillwater elevation at 1447 feet based on a reduction in storage due to the City of Devils Lake levees. That study found that the levees resulted in a 0.29 foot rise in the rest of the lake and that the RAADs project resulted in a 0.23 foot rise in the rest of the lake. Essentially, the effects on the Lake elevation are similar for both projects.*



24. FHWA should ensure that tribal and individual property interests in trust lands are protected when flooded and that the Tribe's reservation boundary is protected. How immediate would inundation of tribal land be? Would property owners retain ownership of the property. How would inundation that is not "immediate" affect Tribal trust assets?

*SLN retains ownership of Tribal lands that are inundated. Allotted Trust lands will be converted to Tribal Trust lands. The timing of the inundation is not known at this time. Inundation due to equalization will occur during construction, after any relocations or other mitigation has been completed. Inundation occurring at a later date due to rising lake waters is briefly described in the EA under the subsections "Effects Due to Rising Lake Waters" under each resource. In the event that any controlled inundation is needed for existing levees, that action will take place at an unknown future date and is not a part of this project. The project will have no effect on the Tribe's reservation boundary.*

**Strike, Gary**

---

**From:** noreen [slttaxdept@gondtc.com]  
**Sent:** Monday, December 17, 2007 8:40 AM  
**To:** CFLHD Devils Lake EA  
**Subject:** Comments re: Environmental Assessment

To Whom It May Concern:

Table 1-1. Permits, Stipulations, or Approvals Required...page 11, last Section: SPIRIT LAKE NATION.  
Business License: "A tax that ensures the contractor has coordinated with SLN regarding TERO".

**THIS IS INCORRECT:** Spirit Lake Tribe, Tax Department is a SEPARATE department from TERO. Please direct ALL CONTRACTOR'S, SUB-CONTRACTORS AND ALL VENDORS, BUSINESSES TO CONTACT THE SPIRIT LAKE TRIBE, TAX DEPARTMENT FOR APPROPRIATE: 1) Business License requirements and 2) Applicable Indian Reservation taxes or other requirements as it relates to Construction Projects, or Sales & Uses taxes.

Questions or clarification please CALL:

*Noreen K. Cavanaugh, Director*  
Tribal Tax Department  
Spirit Lake Tribe  
PO Box 192  
Fort Totten, North Dakota 58335  
{P: **701-766-1265/1701**} {F: 701-766-1269}

12/18/2007

## **Responses to the Spirit Lake Nation Tribal Tax Department**

All vendors, businesses, contractors, and sub-contractors are required to be licensed prior to the onset of any work or company related activity. (ie: conducted on the SLN). License requirement includes business related activity pertaining to Tribal, Federal, and State projects or business activity.

4% Material tax on all materials incorporated into a project or products purchased for project.

Table 1-1 SLN Business License: A tax that ensures the contractor has coordinated with SLN regarding TERO. This is incorrect the Tax Department is a separate department from TERO.

*FHWA will consult with the Tribal Tax Department regarding tax and license information.*



## United States Department of the Interior

BUREAU OF INDIAN AFFAIRS  
Great Plains Regional Office  
115 Fourth Avenue S.E.  
Aberdeen, South Dakota 57401



IN REPLY REFER TO:

Executive Direction  
MC-100

DEC 17 2007

December 7, 2007

Gary Strike, Project Manager  
Federal Highway Administration  
Central Federal Highway Lands Division  
12300 West Dakota Ave.  
Lakewood, CO 80228

Dear Mr. Strike,

Numerous meetings, telephone conference calls, and public hearings have been conducted over the past several years involving the Roads Acting as Dams (RAAD's) Project.

Federal Highway's guidance, through your leadership as Project Manager, pursuant to specific legislation incorporated within the Safe, Accountable, Flexible, Efficient, Transportation Equity Act – A Legacy for Users has been of key importance to the overall success of the RAAD's project to date.

Currently, the Environmental Assessment, Section 4(f) Evaluation for the Devils Lake, North Dakota Roads-Acting-As-Dams (Environmental Assessment) is available for public review and comment with an Executive Committee meeting planned for December 19, 2007. It is our understanding that Federal Lands Highway will be anticipatory of a determination as to a "Preferred Alternative" at that meeting.

Shortly thereafter, upon adoption of the Environmental Assessment by the Bureau of Indian Affairs, Federal Highway will make a decision as to the "build alternative" within Zones 1, 2, 3 and 4. It is also our understanding that Federal Highway will make the decision based on: 1) Requirements set forth within the National Environmental Policy Act; and 2) Estimated build costs associated with the alternatives.

As the RAAD's project involves Federal action through implementation of Phase II, the Federal Government's responsibility as "Trustee" to the Spirit Lake Sioux Tribe and Individual Owners of Allotted trust property is required to be primary in the decision making process.

Specifically, pursuant to the enclosed Executive Memorandum of April 29, 1994 published in the Federal Register under Volume 59, Number 85 signed by former President William J. Clinton and pursuant to the Federal Government's Trust Responsibility commonly referred to as "The Doctrine of Trust Responsibility", the aforementioned criteria that Federal Highway is proposing to use to arrive at a decision regarding a "build alternative" needs to be expanded to include the Federal Governments responsibility as Trustee.

The Supreme Court has held that treaties with Native American Tribes creates a special legal relationship between, in this case, the Spirit Lake Sioux Tribe, a Treaty Tribe and the Federal Government that obligates the Federal Government to uphold the highest responsibility and trust and requires federal officials to manage trust resources to the most exacting fiduciary standards.

The importance of preserving trust property, its value to Native American Culture and the potential for income within Zones 1, 2 and 3 must be paramount in the decision making process and must be a part of the Environmental Assessment.

The omission of the current value and potential income of trust property located within Zones 1, 2 and 3 within the Environmental Assessment, and therefore, without specific data reflective of current value and potential income, the omission by consultation with the Spirit Lake Sioux Tribe and Individual Trust Owners is not consistent with the Federal Governments role as Trustee.


Additionally, any diminishment of the current protection afforded by existing RAAD's and perimeter levees that impact, by our proposed action or in-action allowing the property in question to flood, is also not consistent with the Federal Governments role as Trustee.

Finally, the requirements set forth in Executive Order 13175 dated November 6, 2000, also attached, clearly indicates that prior consultation must be effected prior to the establishment through Policymaking Criteria, the formulation and implementation of policies that have tribal impacts. Any unfunded mandates cannot be imposed upon the Spirit Lake Sioux Tribe for the payment of deferential costs associated with the alternatives should the Spirit Lake Sioux Tribe select a more expensive alternative.

I strongly urge Federal Highway to reconsider the currently proposed decision making criteria to be inclusive of our role as Trustee and all required legal standards.

Should any questions arise, feel free to contact me at (605) 226-7343.

Sincerely,

  
ACTING Regional Director

cc: Superintendent, Fort Totten Agency  
Fiduciary Trust Officer, Fort Totten Agency



**Central Federal Lands Highway Division**

12300 West Dakota Avenue  
Lakewood, Colorado 80228

Reply To:  
HFPM-16

May 5, 2008

Alice Harwood  
Bureau of Indian Affairs  
Great Plains Office Regional Director  
115 Fourth Avenue S.E.  
Aberdeen, SD 57401

RE: Executive Direction MC-100, Devils Lake RAADs Project

Dear Ms. Harwood:

This is in response to your letter dated December 7, 2007, in which you requested the Federal Highway Administration (FHWA) reconsider the evaluation criteria for selection of preferred alternatives on the Roads Acting as Dams (RAADs) Project so that the criteria was inclusive of the Federal Government's role as Trustee to the Spirit Lake Sioux Tribe (SLN) and all required legal standards. You stated, specifically, the failure to consider the importance of preserving Trust land, and its value and income potential, and the failure to consult with SLN violates the Government's Trust responsibility. You believe, further, that the FHWA will select among project alternatives solely based on National Environmental Policy Act requirements and construction costs. Since receipt of your letter the FHWA has met with BIA project representatives to discuss and resolve your concerns.

The FHWA, in cooperation with the Bureau of Indian Affairs (BIA), administers the Indian Reservation Roads program. We are acutely aware of the Federal Government's Trust responsibilities and believe we are fully satisfying them on this project. We understand that Trust land holds an important value to SLN and the project will do much to preserve the value of Trust land. At this time, however, the Emergency Relief (ER) Program provides the only funding for the project and has specific funding guidelines within which, the FHWA as a part of its stewardship responsibilities, must manage. As stated consistently in the past, the lowest cost alternatives that meet the project purpose and comply with all environmental requirements, are the evaluation criteria that will be used to determine the cost participation of the ER Program in the RAADs project.

At this time Alternatives 1A, 2D, and 3A will be the preferred alternatives within SLN. Of these alternatives, 2D is the only alternative that has a less costly alternative, 2E, within its zone that meets environmental requirements. The SLN and BIA determined that the additional Trust land protection of Alternative 2D outweighed the lower cost of Alternative 2E. The BIA and FHWA have agreed that the costs for 2D in the initial stage of the Phase 2 project, i.e. construction to the approximate 1455 embankment elevation, are similar to

**MOVING THE  
AMERICAN  
ECONOMY**

2

Alternative 2E and therefore can be fully funded by the ER Program. However, any future stages of construction on this alternative funded through the ER Program will require additional discussions between our agencies to determine the cost sharing required.

In addition to its stewardship role in administering the ER Program, the FHWA is leading the project team in development of the Environmental Assessment (EA) pursuant to the requirements of NEPA. The Central Federal Lands Highway Division (CFL) of the FHWA was asked to lead in completing the environmental review process for the project, in cooperation with the BIA, SLN, and NDDOT, who are the project owners. It is important to remember that NEPA is a procedural statute requiring evaluation of a proposed project's environmental effects, and it dictates no substantive outcomes and elevates no criteria above others. During the NEPA process, the project team identified a range of evaluation criteria for the project. The criteria were agreed upon at the October 5, 2007, Executive Committee meeting, which representatives from the BIA attended. The criteria include construction costs, acres required for right-of-way (ROW), residences relocated by construction impacts and equalization, agricultural land impacted, land loss by equalization, wetlands, and land and residences protected. The attached table shows the evaluation criteria and highlights the alternative that the Executive Committee determined best meets each criterion. As the table shows the evaluation criteria were far more extensive than solely construction cost and demonstrate that the project development process, led by FHWA incorporated the needs of each partner agency and entity involved in the project.

You also stated in your letter that FHWA failed to meet its Trust responsibilities by not adequately coordinating with the Spirit Lake Tribe and by omitting the current value and potential income of Trust property from the EA. Throughout the entire process the BIA and SLN have been actively involved in the development of the project. At no time in the process did CFL receive any comment from the BIA or the SLN related to this method of evaluation. Moreover, CFL has reviewed the documents attached to your letter, the information provided by the Fort Totten Superintendent in a letter dated January 3, 2008, as well as 25 CFR Part 169, Rights-Of-Way Over Indian Lands, and finds no express or implied requirement, pursuant to a Trust responsibility or any other law, regulation, or duty, to determine the exact value of lands or potential income during the NEPA process.

To the contrary, under FHWA and Government-wide Council on Environmental Quality regulations, Federal agencies are prohibited from expending more resources than necessary to study the environmental effects of proposed projects. Accordingly, the current use of all land affected by the project was considered generally in the EA, consistent with standard environmental analysis. The purpose of the regulation is to avoid the prejudicial effect of committing significant resources to a project prior to a decision to proceed with the project. Property acquisition, including appraisals (land valuation), is one of the final design activities that may not proceed until the environmental document is signed. The cost of appraisals can be significant. For this project, it is estimated that approximately 40 parcels would need to be appraised, at \$3,000 per parcel, for an estimated cost of \$120,000. Moreover, the value of appraisals completed well before final design and acquisition would be questionable. Until final design has been completed, which occurs after the NEPA decision, an appraisal could only estimate the effect of the project on properties, making valuation nearly impossible.

Further, appraisals completed during preliminary engineering may be outdated at the time of acquisition, thereby necessitating the additional expense of updated. Such an outcome would be in derogation of the FHWA's stewardship responsibility and might even implicate the Government's Trust responsibility. Based on these reasons, your staff, the SLN, and the FHWA have agreed that appraisals will not be done until after NEPA is completed and only on the preferred alternative selected, per standard procedure. The FHWA did provide the SLN with all general land valuation and lease information it possesses, though it will not be included in the EA.

The interagency team assigned to this project has operated at a very high level and has accomplished outstanding work in completing the Phase 1 efforts and in delivery of the EA. We recognize that there will be difficult issues to work through as we move forward, however the FHWA looks forward to continuing to collaborate with you on this project. Should any questions arise please contact me at (720) 963-3464.

Sincerely,



Gary Strike, P.E.  
Project Manager

Enclosure

cc w/enclosure:

**Rod Cavanaugh**, Superintendent Ft. Totten Agency, PO Box 270, Ft. Totten, ND 58335

**Randy Silbaugh**, Highway Engineer, Great Plains Regional Office, 115 4<sup>th</sup> Avenue SE, Aberdeen, SD, 57401

**John Baxter**, Associate Administrator, Federal Lands Highway, 1200 New Jersey Avenue, SE, Washington, DC 20590

**Rick Suarez**, Division Engineer, Central Federal Lands Highway Division, 12300 West Dakota Avenue, Lakewood, CO 80228

**Dave Zanetell**, Director of Project Delivery, Central Federal Lands Highway Division, 12300 West Dakota Avenue, Lakewood, CO 80228

**Wendell Meyer**, North Dakota Division Administrator, 1471 Interstate Loop, Bismark, ND, 58503

**Ronny Hartl**, North Dakota Assistant Division Administrator, 1471 Interstate Loop, Bismark, ND, 58503

bc w/o enclosures:

Reading file

Central File – ND 1(992), Devils Lake Roads-Acting-As-Dams

GStrike::5/5/08:N:\ND\erfo1(992)\ProjectManagers\letters\BIA Comment Response Letter.doc



**DEVILS LAKE ROADS ACTING AS DAMS PROJECT  
PREFERRED ALTERNATIVE EVALUATION CRITERIA**

	Wetlands Filled (acres)	Construction Cost Total (1957/ER/ERFO) (millions)	Annual O & M Costs	Right of Way Cost and acres Estimated at \$500/acre		Properties relocated under the Uniform Act for ROW cost (number) Estimated at \$150,000/residence			Residences below 1449 feet to be relocated due to equalization cost (number)	Agricultural Land Impacted (acres) ROW/Inundation (at or below 1449 feet)	Equalization - Land at 1449 and below inundated Total (Allot.-Trust/Fee) (acres) Estimated at \$500/acres	Added benefit - protection Land (acres) <sup>1</sup> and Residences below 1460 ft (number) <sup>2,3</sup>	Total Cost (million) <sup>4</sup>
				Total	Fee/Trust/State/Federal	Total	Fee	Trust					
No Action	0	\$0	\$0	\$0	(0/0/0/0)	\$0	\$0	\$0	131 residences and 4 businesses	0/785	2067(1007/873)	0/0	\$0
1A (Preferred)	24.3	\$98 (\$29/\$26/\$43)	\$136,000	\$24,700 (49)	(15/32/0/0)	\$150,000 (1)	\$0 (0)	\$150,000 (1)	\$600,000 (4)	4/9	\$12,000 24 (11/13)	0/0	\$98.787
2A	10.6	\$55 (\$30/\$15/\$10)	\$149,000	\$52,250 (105)	(46/54/0/5)	\$600,000 (4)	\$150,000 (1)	\$450,000 (3)	\$0 (0)	11/0	\$0 0 (0/0)	270/23	\$55.652
2B	10.7	\$52 (\$28/\$14/\$10)	\$145,000	\$50,000 (100)	(50/46/0/5)	\$600,000 (4)	\$150,000 (1)	\$450,000 (3)	\$0 (0)	13/0	\$0 0 (0/0)	256/23	\$52.650
2C	16.4	\$68 (\$30/\$28/\$10)	\$144,000	\$46,100 (92)	(34/49/0/10)	\$600,000 (4)	\$150,000 (1)	\$450,000 (3)	\$0 (0)	17/0	\$0 0 (0/0)	0/0	\$68.646
2D	13.5	\$49 (\$49/\$0/\$0)	\$197,000	\$91,550 (183)	(82/97/0/5)	\$150,000 (1)	\$150,000 (1)	\$0 (0)	\$0 (0)	29/0	\$0 0 (0/0)	815/36	\$49.242
2E	9.9	\$34 (\$34/\$0/\$0)	\$129,000	\$63,050 (126)	(50/71/0/5)	\$150,000 (1)	\$150,000 (1)	\$0 (0)	\$0 (0)	9/0	\$0 0 (0/0)	329/26	\$34.213
3A	12.0	\$45 (\$6/\$39/\$0)	\$81,000	\$29,650 (59)	(39/21/0/0)	\$150,000 (1)	\$150,000 (1)	\$0 (0)	\$150,000 (1)	32/32	\$139,500 279 (75/204)	0/0	\$45.469
3B	14.0	\$54 (\$21/\$33/\$0)	\$118,000	\$38,250 (76)	(52/24/0/0)	\$150,000 (1)	\$150,000 (1)	\$0 (0)	\$0 (0)	44/0	\$0 0 (0/0)	341/1	\$54.188
4A	9.3	\$33 (\$0/\$33/\$0)	\$0	\$17,650 (35)	(11/0/24/0)	\$450,000 (3)	\$450,000 (3)	N/A	\$1,800,000 <sup>5</sup> (7)	3/41	\$75,500 151 (0/66)	0/0	\$35.343
4B <sup>6</sup>	1.4	\$30 (\$15/\$15/\$0)	\$83,000	\$12,550 (25)	(5/0/20/0)	\$450,000 (3)	\$450,000 (3)	N/A	\$0 (0)	0/0	\$0 0 (0/0)	433/15	\$30.463

<sup>1</sup> Note that any combination of the build alternatives will maintain BIA 4 and 5 as dams in Zone 1, include the Spring Lake Dam in Zone 3 and will prevent inundation from the east in Zone 2 by the use of perimeter dams or building ND 20 as a dam. This results in protecting an estimated 2,611 acres of land in the St. Michael Interior area *regardless* of which combination of build alternatives are selected.

<sup>2</sup> The FHWA did field check the numbers of residences below 1449 feet and therefore have a fairly accurate count of the number of residences that would be inundated in the event that a RAADs is equalized at the "current" elevation. The numbers of residences above 1449 and up to 1460 feet were estimated by counting the number of structures on aerial photographs.

<sup>3</sup> Note that any combination of the build alternatives will maintain BIA 4 and 5 as dams in Zone 1, include the Spring Lake Dam in Zone 3 and will prevent inundation from the east in Zone 2 by the use of perimeter dams or building ND 20 as a dam. This results in protecting an estimated 82 residences in the St. Michael Interior area *regardless* of which combination of build alternatives are selected.

<sup>4</sup> Includes all costs in table except operation and maintenance, which is an annual cost.

<sup>5</sup> Includes \$1,050,000 for residences and \$750,000 for buildings in Camp Grafton. In lieu of replacing buildings, the construction cost to build the Camp Grafton Dam to elevation 1458 is estimated at \$4.5 million.

<sup>6</sup> At 1458 elevation alternative requires construction of perimeter dams to avoid inundation of area being protected under this alternative. The construction costs for the perimeter dams are estimated at \$1.5 million.

BUREAU OF INDIAN AFFAIRS  
Great Plains Regional Office  
115 4<sup>th</sup> Ave. SE  
Aberdeen, SD 57401  
605/226-7645

## BRANCH of ROADS MC-307

# Fax

<b>To:</b>	Gary Strike - CFLH	<b>From:</b>	Randy Silbaugh
<b>Fax:</b>	720-963-3596	<b>Pages:</b>	1
<b>Phone:</b>		<b>Date:</b>	December 14, 2007
<b>Re:</b>	Devils Lake EA - Phase II	<b>CC:</b>	

☐ Urgent    ☐ For Review    ☐ Please Comment    ☐ Please Reply    ☐ Please Recycle

### • Comments:

Bob Larson had a few comments on the EA that he asked me to express to you. I am summarizing the email that he sent to me.

1 Chapter 3, Section C, Noxious Weeds (page 52) – The wording “introduce unwanted vegetation” implies we may be bringing noxious seed to the area. All we are doing is exposing dormant seed in cut or fill sections. I believe “expose dormant seed in areas graded for construction zones” is a better wording.

2 Chapter 3, Section G, 1d) Land Use & Ownership (page 88, last sentence of 1<sup>st</sup> paragraph) – The wording “these landowners would no longer retain ownership of their land”. This would not be true on Trust Land since no ownership is ever taken. When obtaining ROW, a perpetual easement is placed as an encumbrance on the property. The privileges of ownership remain on the land but with a public use easement. In order to treat the fee owners the same as the trust owners, the BIA also uses easements on fee land (the NDDOT probably purchases the fee land). There are other sections in the EA where the same comment would apply.

3 Chapter 3, Section G, 10 Cumulative Effects – One item that is not mentioned is the damage to the existing road system by having this huge volume of borrow material hauled over it. Depending on which borrow pits are used, we could do significant damage and shorten the design life of roads that are not included in this project.

Thanks,

Randy Silbaugh

### **FHWA's response to Mr. Larson's comments**

1. Section C on page 52 refers to noxious weeds that may be imported from other areas on unwashed construction equipment, not to exposing seed already present. No change made.
2. Comment noted, change made.
3. This item has been added.



**STATE  
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Transportation

Merlan E. Paaverud, Jr.  
Director

Accredited by the  
American Association  
of Museums

April 5, 2006

Mr. Rick West and Ms. Jennifer Corwin ✓  
Project Manager/Environmental  
Central Federal Lands Highway Division  
Federal Highway Administration/US DOT  
12300 West Dakota Avenue  
Suite 230  
Lakewood, CO 80228

**NDSHPO REF. : 06-0122d FHWA Phase II Devils Lake BIA  
Roads-Acting-as-Dams Project (RAAD)-Class III CRI Report  
[FHWA/CFLHD: ND ERFO 1(992)]  
HFHD-16**

Dear Mr. West and Ms. Corwin:

We have reviewed: "Cultural Resources Survey Report Devils Lake Phase II ND ERFO 1(992) Benson and Ramsey Counties, North Dakota," (ERO Resources Corporation, March 2007) and find it acceptable. We concur with the level and scope of identification efforts undertaken on this phase of the project. Also, we concur with avoidance for sites 32BE135 and 32RY392, as recommended in the report and FHWA documentation. We would concur with a FHWA determination of "**No Historic Properties Affected**" provided that sites 32BE135 and 32RY392 are avoided, and that the project is of the nature stated and it takes place in the locations plotted and mapped in the report and FHWA documentation.

Also, we look forward to further consultation as other activities of the RAAD Phase II project develop. Thank you for the opportunity to review the project. If you have questions please contact either Susan Quinnell at (701) 328-3576 or Paul Picha at (701) 328-3574.

Sincerely,

Merlan E. Paaverud, Jr.  
State Historic Preservation Officer (North Dakota)  
and  
Director, State Historical Society of North Dakota  
c: Jeani L. Borchert, Design Division, NDDOT

North Dakota Heritage Center • 612 East Boulevard Avenue, Bismarck, ND 58505-0830 • Phone 701-328-2666 • Fax: 701-328-3710  
Email: histsoc@state.nd.us • Web site: <http://www.nd.gov/hist> • TTY: 1-800-366-6888



STATE  
HISTORICAL  
SOCIETY  
OF NORTH DAKOTA

JAN 12 2008

John Hoeven  
Governor of North Dakota

January 9, 2008

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Gary Strike, PE  
Project Manager  
Central Federal Lands Highway Division  
Federal Highway Administration/US DOT  
12300 West Dakota Avenue  
Lakewood, CO 80228

**NDSHPO REF. : 06-0122h FHWA Phase II Devils Lake BIA  
Roads-Acting-as-Dams Project (RAAD) 2007  
Class III CRI Reports: Phase IIB and IIC  
FHWA: ND ERFO 1(992)**

Dear Mr. Strike:

We have received and reviewed NDSHPO 06-0122h: "Devils Lake Phase IIB, ND ERFO 1(992) Benson County, North Dakota," and "Devils Lake Phase IIC, ND ERFO 1(992) Benson County, North Dakota," by Sean Larmore, Kathleen Croll, and Angela Whitfield (ERO, September 2007, October 2007) and find them acceptable after assignment of NDCRS SITS numbers for the sites recorded and discussed therein. These SITS assignments are used in environmental assessment and other documents. Also, we concur with a "**No Historic Properties Affected**" determination in each case provided the recorded sites are avoided as recommended and that each project is of the nature stated and is in the plotted locations found in the FHWA documentation.

Finally, we look forward to continued consultation as other activities of the RAAD Phase II project develop in 2008. Thank you for the opportunity to review the project. If you have questions please contact either Susan Quinell at (701) 328-3576 or Paul Picha at (701) 328-3574.

Sincerely,

Merlan E. Paaverud, Jr.  
State Historic Preservation Officer (North Dakota)

and

Director, State Historical Society of North Dakota  
c: Melissa Dickard, FHWA  
c: Jeani L. Borchert, Design Division, NDDOT



## United States Department of the Interior

### FISH AND WILDLIFE SERVICE

Ecological Services  
3425 Miriam Avenue  
Bismarck, North Dakota 58501



JUN 29 2007

Mr. Gary Strike, Project Manager  
Central Federal Lands Highway Division  
Federal Highway Administration  
12300 West Dakota Avenue, Suite 280  
Lakewood, Colorado 80228

Dear Mr. Strike:

The U.S. Fish and Wildlife Service (Service) has reviewed your letter of May 31, 2007, and the attached Biological Assessment and Report addressing the Devils Lake Phase II, ND ERFO 1 (992) project in Benson and Ramsey Counties, North Dakota. The purpose of this project is to maintain a safe system of roads in an area that has been impacted by Devils Lake. Since 1994, Devils Lake has risen 26 feet in elevation and the lake continues to expand. The action alternatives being considered are designed to address safety hazards currently posed by BIA Routes 1 and 2, and those sections of State Highway 20 and 57 and BIA Routes 4 and 5 that are currently acting as dams. This letter is provided in accordance with Section 7 of the Endangered Species Act (87 stat. 884 as amended; 16 U.S.C. 1531 et seq.).

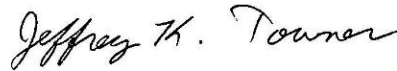
The Service has reviewed the submitted project description and the evaluation of project effects on the bald eagle, piping plover, whooping crane, gray wolf, western prairie fringed orchid, and critical habitat that has been designated for the piping plover. The Service concurs with your determination. This concludes Section 7 consultation for the Devils Lake Phase II, ND ERFO 1 (992) project.

On June 28, 2007, the Department of the Interior announced that the bald eagle has met recovery goals and will be removed from the list of threatened species. This action will become effective on July 28, 2007, 30 days after publication of the final rule in the Federal Register. The bald eagle and their nests remain protected under the provisions of the Bald Eagle Protection Act and the Migratory Bird Treaty Act. We believe the coordination process established between the Federal Highway Administration and the Service's North Dakota Field Office provides adequate safeguards if a pair of bald eagles establishes a new nest site in the project area.

The Devils Lake Phase II emergency project is a complex endeavor involving state, federal, and Tribal agencies. The Federal Highway Administration's offices in Colorado and North Dakota have done a commendable job coordinating this project. We appreciate the ongoing efforts of Melissa Schnier, Jennifer Corwin, and Mark Schrader to keep the interagency team informed throughout the planning process.

If you have any questions or concerns about this consultation or the consultation process, please contact me or Bill Bicknell of my staff at (701) 250-4481.

Sincerely,

A handwritten signature in cursive script that reads "Jeffrey K. Towner".

Jeffrey K. Towner  
Field Supervisor  
North Dakota Field Office

cc: Project Leader, Devils Lake WMD  
Division Administrator, FHWA, Bismarck  
Director, ND Dept. of Transportation, Bismarck  
Director, ND Game and Fish Dept., Bismarck



**JOINT FORCE HEADQUARTERS**  
**DIVISION OF FACILITIES ENGINEERING**  
**NORTH DAKOTA NATIONAL GUARD**  
**PO BOX 5511, BISMARCK, ND 58506-5511**

JFND-DFE-Z

December 9, 2007

Mr. Gary Strike, Project Manager  
Attn: Environment (ND 1 (992)  
Federal Highway Administration  
Central Federal Lands Highway Division  
12300 West Dakota Avenue  
Lakewood, CO 80228

SUBJECT: Devils Lake Roads-Acting-as-Dams Environmental Assessment Comments.


Dear Mr. Strike:

The Office of the Adjutant General, North Dakota National Guard (NDNG) has reviewed the subject environmental assessment as it pertains to the Acorn Ridge Highway 20 and 57 zone 4 alternatives. The Office of the Adjutant General is in favor of Alternative 4-B which consists of raising Highway 20 and 57 and constructing it to act as a dam. The Office of the Adjutant General is opposed to Alternative 4-A Equalization.

The Camp Gilbert C. Grafton Training Center has lost 1,443 acres of training area due to the rising elevation of Devils Lake. Alternate 4-B would prevent the loss of additional training areas that are critical to the operational readiness of our soldiers.

Equalizing Devils Lake in the Acorn Ridge area as proposed in Alternative 4-A would result in: 1) the loss of an additional 60 acres of training area; 2) the loss of over \$700,000 in training facilities and infrastructure; and 3) the requirement for the NDNG to construct a dike that has been estimated to cost between 3 to 4 million dollars. The NDNG does not have access to the level of construction dollars necessary to construct this dike.

Any questions can be addressed to the undersigned at (701) 333-2075.

  
Steven A. Tabor, Lieutenant Colonel  
Director of Facilities Engineering

CF:  
MG Sprynczynatyk  
BG Dohrmann  
COL Schmitz





## United States Department of the Interior



FISH AND WILDLIFE SERVICE  
Devils Lake Wetland Management District  
P.O. Box 908  
Devils Lake, ND 58301  
(701) 662-8611

December 10, 2007

Mr. Gary Strike  
Project Manager  
Federal Highways Administration  
Central Federal Lands Division  
12300 West Dakota Avenue  
Lakewood CO 80228

Dear Mr. Strike,

On behalf of the Devils Lake Wetland Management District of the US Fish and Wildlife Service I will be providing written comment on the Environmental Assessment, Section 4(f) Evaluation for the Devils Lake, North Dakota, Roads-Acting-As-Dams Project, November 2007.

### 1) Chapter 3, Page 126

This section states "Additional material source sites as well as staging areas and access roads would be identified once the construction contract is awarded." Concern arises that potential contractors could submit bids on the project with plans to utilize lands with wetland easements for excavating materials. The concern is that these wetland easements may be unknown to potential contractors and easement wetland impacts could occur. Contractors will be calculating bids on specific sites for necessary quantities of material or with certain distances from the construction sites. If a contractor selects sites protected by wetland easement this could potentially reduce the amount of material that could be extracted from the sites or make the site unusable if wetland impacts are to be avoided. This issue can be addressed by requiring that contractors clear their proposed material source sites with the USFWS prior to bidding, this process can be completed in a few minutes by phone with the potential contractor providing the legal description of the proposed sites. If material source sites with wetland easements are selected, an onsite review will be completed with the contractor to determine if the materials can be extracted without impact to protected wetlands.

Additionally this section states "If impacts cannot be avoided, the contractor would document such impacts, have them cleared by appropriate regulatory agency, and provide mitigation as needed." The preferred scenario would be the sites will be reviewed between the USFWS and the contractor to determine potential impacts prior to excavation or even contract bidding if needed. Additionally this sentence leads the reader to believe that the individual contractor is responsible for the mitigation. Is this the intent? It is the preference of the USFWS that if easement wetland impacts occur on the material source sites that these impacts be included in the easement wetland mitigation for the entire project and be the responsibility of the Federal Highways Administration.

### 2) Chapter 5, Page 143

This section states "Zone 2 contains one easement tract ..." and "Zone 3 has four easement tracts ...". Zone 2 actually contains six wetland easements contracts: 445X; 571X-1, 2-4; 679X; 442X, 1-4; 424X and 446X. Also in Zone 2, there are two FMHA easement contracts: 26C and 27C. Zone 3 actually contains six wetland easement contracts: 444X, 1-3; 468X, 1-3; 434X, 1, 2; 435X; 433X; and 436X.

The locations of these easements are accurately depicted on the map on page 138 of the EA. I have included maps of the easement with my delineation of your work zones. This sentence is primarily brought to your attention concerning activities such as material source extraction sites that are not specifically identified in the EA. Additionally can contractors select material source sites outside of the zones? If so we can provide you or them with locations of easements outside of the zones.

Thank you for the opportunity to comment. Please call with any questions concerning the comments and assistance I can provide you and this project in the future.

Sincerely,

Paul Halko  
Refuge Manager  
Devils Lake WMD  
(701)662-8611 ext. 323

Attachments: (2) Easement boundary maps for Zone 2 and Zone 3

Cc: Jeffery Towner, Ecological Services, 3425 Miriam Ave, Bismarck ND 58501

**FHWA's response to Paul Halko's comments:**

1. Page 126, 1st paragraph states that "Section 4(f) resources (i.e., FWS wetland easements) would be avoided". Language will be added to the EA to clarify this commitment.
2. Contractors will be encouraged to contact the USFWS prior to contract bid to determine whether potential materials sources are wetland easement resource(s) [4(f) sites]. In the event that a 4(f) resource cannot be avoided, the implementing agency will work with FHWA and USFWS to ensure that mitigation measures are appropriate.
3. The easement tracts listed on page 143 are those "within or immediately adjacent to the proposed project." FHWA will be required to clear any materials sources sites in terms of 4(f) use. Language on page 143 will be adjusted to clarify.



U.S. Department  
of Transportation  
**Federal Aviation  
Administration**

December 18, 2007

Federal Aviation Administration  
Bismarck Airports District Office  
2301 University Drive Bldg 23B  
Bismarck, North Dakota 58504

Mr. Gary Strike, Project Manager  
Attn: Environment (ND 1(992))  
Federal Highway Administration  
Central Federal Lands Highway Division  
12300 West Dakota Avenue  
Lakewood, CO 80228

DEC 27 2007

Re: HFHD-16  
ND ERFO 1(992)  
City of Devils Lake and Spirit Lake Nation  
North Dakota

Dear Mr. Strike:

The Bismarck Airports District Office has reviewed the referenced Environmental Assessment for the Devils Lake Roads-Acting-as-Dams Project identified in your letter dated November 9, 2007, and has no objections provided:

1. The Federal Aviation Administration (FAA) is notified of construction or alterations as required by Federal Aviation Regulations, Part 77, Objects Affecting Navigable Airspace, Paragraph 77.13. Please note that Part 77 includes temporary construction vehicles and equipment. The Notice of Proposed Construction or Alteration Form 7460-1 may be obtained and filed online at <https://oeaaa.faa.gov> or mailed to:

Express Processing Center  
Federal Aviation Administration  
Southwest Regional Office  
Obstruction Evaluation Service, AJR-32  
2601 Meacham Boulevard  
Fort Worth, TX 76137-0520

2. FAA technical operations are contacted to identify any possible impacts to aircraft navigation and/or communication equipment. The MSP TSCM for the proposed area may be contacted by phone at (952) 997-9261 or in writing. The address for the Minneapolis Technical Support Center Manager (MSP TSCM) is:

Federal Aviation Administration  
Minneapolis Technical Support Center  
Attn: MSP TSCM  
14800 Galaxie Ave, Suite 300  
Apple Valley, MN 55124

3. Any wetland mitigation and/or other wildlife habitat mitigation associated with the project do not create a hazardous wildlife attractant to surrounding airports. Hazardous wildlife and hazardous wildlife separation distances are defined in FAA Advisory Circular (AC) 150/5200-33A, Hazardous Wildlife Attractants on or near airports. All design, construction, and operation of the project and mitigation components shall comply with FAA AC 150/5200-33A, Hazardous Wildlife Attractants on or near Airports. A copy of the advisory circular may be obtained at [www.faa.gov](http://www.faa.gov).

Please be advised FAA Advisory Circular 150/5200-33A, Hazardous Wildlife Attractants On or Near Airports, advises a 10,000 foot separation distance between the airport and a hazardous wildlife attractant. Additionally, it is recommended that a 5-mile separation distance be considered when the attractant could cause wildlife movement into or across the approach or departure airspace.

If you or the proponents are uncertain if the proposed development will cause a wildlife hazard for your airport or other airports in the area, we recommend you or the proponent consult with the United States Department of Agriculture, APHIS, Wildlife Services or another qualified wildlife biologists. We recommend any wildlife biologist consulting on a matter such as this, meet the qualifications identified FAA Advisory Circular 150/5200-36, "Qualifications for wildlife biologist conducting wildlife hazard assessments and training curriculums for airport personnel involved in controlling wildlife hazards on airports".

If not already included in your planning process, we request that Devils Lake Regional Airport be given the opportunity to provide input and comments.

I appreciate that our office was given the opportunity to review this project. Please contact me if you have any questions or need further information.

If you have additional questions, please contact our office at (701) 323-7380.

Sincerely,



Patricia L. Dressler  
Environmental Protection Specialist  
Bismarck Airports District Office

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## Chapter 8 – List of Preparers

### Central Federal Lands Highway Division Federal Highway Administration

Name	Title: Responsibilities	Education	Experience
Gary Strike, P.E.	<b>Project Manager: Reviewed document.</b>	<b>B.S. Civil Engineering</b>	<b>13 years</b>
Jennifer Corwin	<b>Senior Environment Technical Specialist: Co-authored all chapters of the document. Production and oversight of entire document including appendices.</b>	<b>B.A. Anthropology M.A. Philosophy</b>	<b>16 years</b>
Teresa Engles	<b>Environmental Protection Specialist: Co-authored Chapters 1 and 3 (co-author) of the document. Prepared Social, Economic, and Visual Sections of the document.</b>	<b>B.A. Biology w/minor in Economics M.A. International Relations</b>	<b>7 years</b>
Stephanie Popiel	<b>Environmental Engineer: Authored Section 4(f).</b>	<b>B.S. Civil Engineering</b>	<b>10 years</b>
Melissa Schnier	<b>Environmental Biologist: Co-authored all chapters of the document. Responsible for the Wetlands, Threatened and Endangered Species, Hazardous Materials, Cultural Resources, Floodplains, and Water Quality Sections of the document. Responsible for delivery of final document and FONSI.</b>	<b>B.S. Wildlife Biology M.S. Fisheries Science</b>	<b>5 years</b>

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## Chapter 9 – References

- Benson County, Ramsey County, Spirit Lake Nation. 2005. Action Plan, Devils Lake Area Roads Acting as Dikes. March.
- Bicknell, Bill. 2007. Biologist for United States Fish and Wildlife Service. Biological Resources meeting with FHWA. April 5.
- Borchert, Jeani. 2006. ND DOT archaeologist. Discussion with Jennifer Corwin, FHWA. December 13.
- Brinson, M.M. 1993. A hydrogeomorphic classification of wetlands. USACE Waterways Experiment Station. Wetlands Research Program, Technical Report WRP-DE-4.
- Bureau of Reclamation (BOR). 1999. The Suitability of Existing Road Embankments as Water Barriers. November 29.
- Center for Plant Conservation (CPC). 2007. CPC National Collection Plant Profile for *Platanthera praeclara*. Available at: [http://www.centerforplantconservation.org/ASP/CPC\\_ViewProfile.asp?CPCNum=9293](http://www.centerforplantconservation.org/ASP/CPC_ViewProfile.asp?CPCNum=9293) >. Accessed 11/27/2006.
- Cimarosti, Dan. 2006. USACE Regulatory Branch Chief. Meeting Notes with USACE and EPA. December 7.
- Cowardin, L. M., V. Carter, F. C. Golet, and E. T. LaRoe. 1979. Classification of wetlands and deepwater habitats of the United States. U.S. Fish and Wildlife Service, Office of Biological Services Program. FWS/OBS-79/31.
- Devils Lake Basin Joint Water Resource Board (DLBJWRB) and North Dakota State Water Commission. 2006. Devils Lake Basin Water Management Plan.
- ERO Resources Corporation. 2006. Devils Lake Wetland Delineation Report. Phase II. ND ERFO 1 (992). Prepared for Federal Highway Administration.
- ERO Resources Corporation. 2007a. Devils Lake Biological Assessment and Report. Phase II. ND ERFO 1 (992). Prepared for Federal Highway Administration.
- ERO Resources Corporation. 2007b. Devils Lake Cultural Resources Survey Report. Phase II. ND ERFO 1 (992). Prepared for Federal Highway Administration.
- ERO Resources Corporation. 2007c. Devils Lake Transaction Screen Report. Phase II. ND ERFO 1 (992). Prepared for Federal Highway Administration.
- ERO Resources Corporation. 2007d. Devils Lake Wetland Delineation Report. Phase IIB. ND ERFO 1 (992). Prepared for Federal Highway Administration.
- ERO Resources Corporation. 2007e. Devils Lake Biological Assessment and Report. Phase IIB. ND ERFO 1 (992). Prepared for Federal Highway Administration.
- ERO Resources Corporation. 2007f. Devils Lake Cultural Resources Survey Report. Phase IIB. ND ERFO 1 (992). Prepared for Federal Highway Administration.
- ERO Resources Corporation. 2007g. Devils Lake Transaction Screen Report. Phase IIB. ND ERFO 1 (992). Prepared for Federal Highway Administration.
- ERO Resources Corporation. 2007h. Devils Lake Wetland Delineation Report. Phase IIC. ND ERFO 1 (992). Prepared for Federal Highway Administration.
- ERO Resources Corporation. 2007i. Devils Lake Biological Assessment and Report. Phase IIC. ND ERFO 1 (992). Prepared for Federal Highway Administration.
- Federal Emergency Management Agency (FEMA). 2002. Special Report: Roads as Dikes, Devils Lake Basin, North Dakota Options for Resolution. FEMA, Washington, DC. July.

- FEMA. 2006. Final Programmatic Environmental Assessment, Devils Lake Region, North Dakota. U.S. Department of Homeland Security, Denver, Colorado. May 11.
- FHWA. 2007a. Effects of Roads Acting as Dams and Levees on Devils Lake Water Surface Elevation Technical Memorandum. FHWA, Lakewood, Colorado. April 12.
- FHWA. 2007b. Socio-Economic Study of the Devils Lake Project Area. FHWA, Lakewood, Colorado.
- Interagency Task Force. 2000. Report Addressing the Current and Future Surface Transportation System in the Devils Lake Regions of North Dakota. FHWA, Bismarck, North Dakota. May.
- Jackson, M. and C. Kordecki. 2003. Camp Grafton North 2001 Archaeological Survey, Ramsey County, North Dakota.
- Montana Department of Transportation. 1996. Montana wetland field evaluation form and instructions. Helena, Montana.
- National Oceanic and Atmospheric Administration (NOAA). 2007. NOAA's National Weather Service Weather Forecast Office, Grand Forks, North Dakota. Available at: <http://www.crh.noaa.gov/fgf/scripts/localdata.php?loc=appahps&data=lpodvl>. Accessed February 9.
- North Dakota Department of Transportation (NDDOT). 2001. Rising Water in the Devils Lake Basin (Impacts on Transportation). NDDOT, Bismarck, North Dakota. July
- NDDOT. 2004. Revised Environmental Assessment and Final Section 4(f) Evaluation, US 281 from South of Minnewaukan to Maza, North Dakota. NDDOT, Bismarck, North Dakota. March.
- NDDOT. 2007. 2008-2011 Statewide Transportation Improvement Program. Available at : <http://www.dot.nd.gov/business/business.htm>.
- North Dakota Game and Fish (NDGF). 2004. North Dakota's Comprehensive Wildlife Conservation Strategy. North Dakota Game and Fish Department, Bismarck, North Dakota. Available at: <http://gf.nd.gov/conservation/levels-list.html> (accessed November 17, 2006).
- North Dakota Parks and Recreation Department (NDPRD). 2007. North Dakota Natural Heritage Inventory. Map Created October 2006 (Figure 2).
- North Dakota State Water Commission (NDSWC). 2007. Devils Lake Flooding: Background. Available at: <http://www.swc.state.nd.us/4dlink9/4dcgi/GetSubCategoryRecord/Devils%20Lake%20Flooding/Background>.
- Osborne, L.F. 2000. Impacts of Regional Climate Variability in the Red River of the North Basin. University of North Dakota Regional Weather Information Center Report No. 2000-1.
- Tabor, Steve. 2007. Lieutenant Colonel and Director of Camp Grafton Facilities Engineering. E-mail communication with Jennifer Corwin, FHWA. May 4.
- Tribune. 2006. The Bismarck Tribune.Com online newspaper article: Great Spring for Tracking Whooping Cranes in N.D. Available at: <http://www.bismarcktribune.com/articles/2006/05/09/news/local/114380.txt>. Accessed November 17.
- United States Army Corps of Engineers (USACE). 2003. Devils Lake North Dakota Integrated Planning Report and Final Environmental Impact Statement. April.

- USACE. 2007. Hydraulics and Hydrology Design Criteria Memorandum: HHDCM. Hydraulics and Hydrology Dam Safety Analysis. February 28.
- United States Congress (U.S. Congress). U.S. Senate. Committee on Environment and Public Works. 1997. On a Proposed Flood Control Project at Devils Lake, North Dakota. 105th Congress. October 23.
- United States Fish and Wildlife Service (USFWS). 2002. Final Environmental Assessment, Proposal of Critical Habitat for the Northern Great Plains Breeding Population of Piping Plovers (*Charadrius melodus*). Prepared by U.S. Fish and Wildlife Service South Dakota Ecological Services Field Office Pierre, SD.
- USFWS. 2003. Gray Wolf Fact Sheet, State Field Office, Bismarck, ND.
- USFWS. 2007a. Threatened and Endangered Species System (TESS). Available at: [http://ecos.fws.gov/tess\\_public/StateListingAndOccurrence.do?state=ND](http://ecos.fws.gov/tess_public/StateListingAndOccurrence.do?state=ND).
- USFWS. 2007b. Gray Wolves in the Northern Rocky Mountains. Available at: <http://www.fws.gov/mountain-prairie/species/mammals/wolf/>. Accessed November 27, 2006.
- United States Geological Survey (USGS). 2000a. Climatology and Potential Effects of an Emergency Outlet Devils Lake Basin, North Dakota. USGS Fact Sheet FS-089-00. June.
- USGS. 2000b. Climatology, Hydrology, and Simulation of an Emergency Outlet, Devils Lake Basin, North Dakota. USGS Water-Resources Investigations Report 00-4174. August.
- USGS. 2002. Simulation of a Proposed Emergency Outlet from Devils Lake, North Dakota. USGS Water-Resources Investigations Report 02-4042, Bismarck, North Dakota.
- USGS. 2007a. Northern Prairie Wildlife Research Center (NPWRC) Database. January 23. Available at: <http://www.npwrc.usgs.gov/resource/wildlife/endanger/index.htm>.
- USGS. 2007b. North Dakota Water Science Center. Devils Lake Basin, Water Data. Available at: <http://nd.water.usgs.gov/devilslake/data/data.html>. Accessed August 7.
- USGS. 2007c. Devils Lake and Stump Lake elevation-area-volume table. Available at: <http://nd.water.usgs.gov/devilslake/pdf/elevation-area-volume.pdf>. Accessed August 7.

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